**Administrator-General v Bwanika and others**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 12 October 2004

**Case Number:** 7/03

**Before:** Odoki CJ, Oder, Tsekooko, Karokora and Kanyeihamba JJSC

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Appeal – First appellate Court’s duty to re-evalute evidence.*

*[2] Civil procedure – Third party to enter appearance – Effect of failure by third party to enter appearance.*

**Editor’s Summary**

The High Court granted to appellants letters of administration to administer the estate of Francis Drake

Manyiga (deceased) in 1978. The respondents were then minor children of the deceased. The estate comprised mainly of a commercial building in Masala Municipality. The appellants instructed a firm of advocates to sell the property. The proceeds of sale were collected by a member of staff from the advocates by a cheque on 9 May 1996. The amount was Ushs83 995 560-00. Later a senior accountant of the appellant banked the cheque in the Bankruptcy Estate Account instead of general account. Both accounts were in the Kampala branch of the Uganda Commercial Bank Limited.

Two employees of the appellant withdrew all the money over a period of two years and disappeared.

The respondents sued the appellants for the entire sum with interest and general damages for conversion.

Three years after pleadings had closed the appellant applied to issue a third party notice against the bank for identity of the money which had been lost in the bank. No reply was filed by the bank. The Court of

Appeal dismissed the appeal but varied the award and increased the amounts. The appellant appealed to the Supreme Court. The grounds of appeal were that the Court of Appeal erred in holding that there was no evidence of negligence on the part of the bank and not holding the Bank should have indemnified the appellant.

The appellant also contested the enhancement of the award by the Court of Appeal. It was argued by the respondents that the bank was not made a party to the suit in the High Court or to the subsequent appeals and it would be inconsequential to make any orders against the bank.

**Held** – A second appellate Court will not interfere with the findings of fact by a first appellate Court except where the first appellate Court has erred in law by not treating the evidence as a whole; *Pandya v*

*R* [1957] EA 336 approved.

The Court of Appeal had carefully evaluated the evidence in the High Court and the Supreme Court had no reason to interfere with its findings. The bank having failed to enter appearance to the third party notice, the appellant should have proceeded to obtain the remedy of indemnity against it.

The award by the Court of Appeal was excessive and ought to be reduced.

Appeal was allowed in part.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Bogere Moses v Uganda* criminal appeal number 1 of 1997 (SCU)(UR)

*Kifamunte Henry v Uganda* [1999] 2 EA

*Pandya v Republic* [1957] EA 336 – **APP**

*Shantila Manaklal Ruwala v R* [1957] EA 570

***United Kingdom***

*Cassidy v Ministry of Health* [1951] 2 KB 343

*Coghland v Cumberland* [1898] 1 Ch 704 (CA)

*Commissions of Taxation v English, Scottish and Australian Bank Limited* [1970] AC 683

*House Property v London County and Westminister Bank* [1951] 84 LJ KB 1846

*Lloyd v Grace Smith* [1912] HL 716

*Re Londonderry Settlement* [1964] 3 All ER 855