**Begumisa and others v Tibebaga**

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

**Date of Judgment:** 2004

**Case Number:** 17/02

**Before:** Oder, Tsekooko, Karokora, Mulenga and Kato JJ

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Appeal – Duty of first appellate court to evaluate evidence – Failure of first appellate court to*

*re-evaluate evidence – Whether failure fatal.*

*[2] Court of Appeal Rules – Rule 29(1) – Whether the use of the word ‘may’ gives Court of Appeal*

*discretion to evaluate evidence in the High Court.*

*[3]* Resjudicata *– Defence to action.*

**Editor’s Summary**

The respondent sued the appellants in the High Court to recover the suit land claiming the appellants were trespassers upon it and that he had title document averring the land under the Registration of Titles

Act. The High Court decided in favour of the respondent and the appellants appealed to the Court of

Appeal. Upon the appellants’ application, the Court of Appeal directed that some further evidence be taken by a Commissioner and all the parties chose the Registrar of the High Court.

The Registrar heard the evidence of a surveyor from the Lands and Surveys Department and recorded all the evidence which he submitted to the Court of Appeal. The Court of Appeal dismissed the evidence taken by the Registrar as one sided and without evaluating the evidence in the High Court, decided in favour of the respondent. The appellants further appealed to the Supreme Court on the ground that the

Court of Appeal erred in law by failing to adequately evaluate the evidence adduced as a whole and make their own conclusions.

The respondents argued that rule 29(1) of the Court of Appeal Rules gave the court the discretion to re-evaluate the evidence or not.

**Held** - Although the wording of rule 29(1) of the Court of Appeal Rules uses the word ‘may’ the legal obligation on a first appellate court to re-appraise evidence is founded on common law rather than in the rules of procedure. It is a well settled principle that a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact and law, giving due allowance for the fact that it has neither seen nor heard the witnesses. *Loghllan v Cumberland* [1898] I Ch 704 and *Pandya v R* [1957] EA

336 approved.

Appeal was allowed.

**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 and another v Uganda* criminal appeal number 1 of 1997 – **AP**

*Kifamunte Henry v Uganda* criminal appeal number 10 of 1997 – **AP**

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

*Ruwala v Republic* [1957] EA 570 – **D**

***United Kingdom***

*Coghlan v Cumberland* [1898] 1 Ch 704 – **APP**