**Mwayi v Uganda**

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

**Date of judgment:** 15 February 2006

**Case Number:** 32/03

**Before:** Oder, Karokora, Mulenga, Kanyeihamba and Katureebe JJSC

**Sourced by:** LawAfrica

**Summarised by:** H Kibet

*[1] Appellate procedure – Duty of a first appellate court – Scrutiny of the evidence adduced at trial –*

*Whether the Court of Appeal had adequately re-evaluated the evidence.*

*[2] Criminal law – Murder – Burden of proof – Whether the prosecution had proved its case – Sections*

*183 and 184 – Penal Code Act.*

*[3] Evidence – Alibi – Common intention – Whether the prosecution had disproved the appellants’*

*alibis – Whether there was common intention among the appellants.*

**Editor’s Summary**

The appellants were tried and convicted by the High Court on a charge of murder contrary to sections 183 and 184 of the Penal Code Act. Their appeals to the Court of Appeal were dismissed. They now appealed to the Supreme Court on the grounds that the Court of Appeal erred in failing to adequately address the appellants’ defences of alibi, that it failed to properly re-evaluate the defence evidence as a whole and that it erred in holding that there was a common intention between the appellants. Counsel for the respondent supported the convictions of the appellants and argued that there was sufficient evidence to convict the appellants.

**Held** – The Court of Appeal rightly found that the trial court had erred in failing to consider the defences of alibi and the issue of grudge. However, the Court had dealt with the two issues and, having scrutinised the evidence as a whole, found that there was no merit in the allegation of grudge and that the prosecution had disproved the alibis. The Court of Appeal had correctly resolved all the relevant issues and rightly upheld the convictions. Appeal dismissed. However, confirmation of the death sentences would be postponed until the determination of the appeal in *Zahura v Uganda* [2004] LLR 436 (SCU) followed.

**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)

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

*Zahura v Uganda* [2004] LLR 436 (SCU) – **F**