**Twiga Chemical Industries v Bamusedde**

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

**Date of judgment:** 27 June 2005

**Case Number:** 16/04

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

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*[1] Appellate procedure – Duty of a first appellate court – Re-evaluation of evidence on record –*

*Whether the appellate court had adequately re-evaluated the evidence.*

*[2] Civil procedure –* Ex parte *judgment – Application to set aside – Principles to be applied in determining application – applicant to give good or substantial reasons – Whether there were good reasons for the setting aside of the* ex parte *judgment.*

**Editor’s Summary**

The appellant sued the respondent in the High Court seeking to recover a sum of UShs 15.420 million from the respondent, being the balance owed to it on account of various chemicals sold to the latter. On 3

November 2000, the respondent filed a written statement of defence denying any indebtedness to the appellant. She also counterclaimed sums of UShs 4.8 million and UShs 2.967 million from the appellant for distribution services and debt collection expenses respectively undertaken for the appellant. The appellant did not file any reply or defence to the averments and counterclaim. However, when the parties first appeared in court on 8 December 2000, the appellant was given leave by the court to file a reply to the counterclaim. The appellant failed to do so. The case was fixed for mention on 12 March 2001 but that date turned out to be an unscheduled public holiday. When the suit next came up before the court for hearing on 12 June 2001, the respondent’s counsel was present but neither the appellant nor its counsel was present. Upon the respondent’s application, the appellant’s suit was dismissed and judgment on the counterclaim was entered in favour of the respondent in the sum of UShs 4.8 million with interest. Costs of the suit and the counterclaim were also awarded to the respondent.

On 13 November 2001, the appellant filed a motion seeking to set aside the court’s dismissal of its suit as well as the decree entered in favour of the respondent on the counterclaim. The grounds for its application were that it had not been served with any hearing notice and was, thus, unaware of the hearing date. The application was dismissed as was an appeal therefrom to the Court of Appeal.

The appellant now appealed to the Supreme Court on the grounds, *inter alia*, that the Court of Appeal erred in finding that the appellant was aware of the 28 June hearing date, that it erred in declining to interfere with the trial judge’s exercise of discretion and in holding that the respondent’s claim was pecuniary and liquidated in nature.

In support of the appeal, counsel for the appellant argued, *inter alia*, that the justices of appeal had failed to re-appraise and re-evaluate the evidence as a whole and that if they had done so, they would have been satisfied that the trial judge had erred in failing to appreciate that no hearing notice existed and hence could not have been served. In reply, counsel for the respondent asserted that the Court of Appeal had diligently performed its duty in accordance with the law and that its reasons for confirming the trial judge’s decision could not be faulted.

**Held** – It was clear that when the trial judge dismissed the appellant’s claim, he was satisfied that the appellant had failed to prosecute the claim or defend the counterclaim and in acting as he did, the judge acted correctly and in accordance with the law.

An application to set aside an *ex parte* judgment could not succeed if no good or substantial reasons were given to justify setting it aside; *Departed Asians Property Custodian Board v Issa Bukenya*(*supra)* applied. In this instance, the trial judge was correct in dismissing the application as no reasonable justification was advanced on behalf of the appellant for its absence and that of its counsel. Moreover, counsel for the appellant’s participation in the taxation proceedings in the High Court implied knowledge of what had occurred before.

There was no merit in the appeal against the counterclaim. Both the trial judge and the Court of

Appeal only awarded the sum of UShs 4.8 million and disallowed respondent’s prayers for general damages and other sums of money and in so doing acted correctly.

Appeal dismissed with costs to the respondent.

**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)

*Banco Arabe Espanol v Bank of Uganda* [1999] 2 EA

*Departed Asians Property Custodian Board v Issa Bukenya* Civil appeal number 18 [1991] – **AP**