

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CRIMINAL DIVISION**

**MISCELLANEOUS APPLICATION NO. 66 OF 2015**

**(Arising from Criminal Appeal No.52 of 2015, which also is arising from Criminal Case No. 163 of 2013 of Buganda Road Court, Kampala)**

**PETER WASSWA WERAGA** .....  
**APPLICANT**

**VERSUS**

**UGANDA** .....  
**RESPONDENT**

**RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA**

**1. Introduction**

**1.1 Representation**

The applicant, Peter Wasswa Weraga, is being represented by Mr. Eric Muhwezi from the Muhwezi Law Chambers Advocates, Kampala. Whereas, the respondent is being represented by Ms. Lillian Nandaula, State Attorney working with the Directorate of Public Prosecutions, at the Headquarters, Kampala.

2. This application is seeking for an order that leave be granted to the applicant to adduce additional evidence in criminal appeal No. 52 of 2015, Peter Wasswa Weraga – Vs – Uganda, which is pending in this Court.

Further, this application is brought under Section 41 of the Criminal Procedure Code Act, Cap.116 ad Section 39 of the Judicature Act Cap. 13 and Section 98 of the Civil Procedure Act, Cap.71.

**3. This application is based on the following grounds; that:-**

- i. Whereas in the lower Court the prosecution witnesses: PW1, Rashida Butanula, State Attorney, in the Administrator General's Department; PW2, Hon. Justice Eldad Mwagnustya, Justice of the Court of Appeal (as he then was; PW3, Karungi Ahmed, a resident of Kajjansi, Cobbler and treats hides and Skins; PW4, Peter Kasule Mpagi Mukolobozi an Entomologist, working outside Uganda; PW5, Atalo Laurel, a Registrar of Titles, Mukono Office; and PW6, D/AIP Ariko Martin testified that the applicant forged letters of administration for the estate of late Ibrahim Kigala and uttered the same to the Registrar of Titles, Mukono with intent to fraudulently procure two (2) certificates of title, Kyaggwe Block 101 Plots 1251 and 1492 and it was on that basis that the applicant was convicted of forgery and uttering false documents, he was later exonerated by the Administrator General and Commissioner Land Registration who were both represented in Court by PW1 and PW5, respectively.
- ii. That the said exoneration of the applicant/appellant rendered void the evidence of PW1, PW3, PW4, PW5 and PW6 on proof of the ingredients of intent to deceive or defraud on charges of forgery of letters of administration and uttering the same.
- iii. The Commissioner Land Registration in her letter advised the aggrieved person claiming to be a beneficiary in the estate of Ibrahim Kigula to seek redress from Court.
- iv. That it is in the interest of justice that leave be granted for the applicant to adduce additional evidence on appeal.

**4. Resolution of this application by Court**

- 4.1 Counsel for the applicant, Mr. Eric Muhwezi, in his submissions evaluated the applicant's affidavit evidence in his argument in support of this application. He relied on Section 41 of the Criminal Procedure Code Act, and the case of Nkonge Robert –vs-

Uganda, criminal appeal No.148 of 2009, Court of appeal of Uganda in support of his client's case. He prayed that this application be allowed in the orders that are being sought therein.

- 4.2 In reply, Counsel for the respondent, Ms. Lillian Nandawula, in her submissions did not agree with the arguments by Counsel for the applicant. She submitted that the letter of the Administrator General was written on 31<sup>st</sup> March, 2015 and received by Counsel for the applicant on 1<sup>st</sup> April 2015 and that judgment was delivered on 29<sup>th</sup> April 2015. That, that means that by the time the applicant was sentenced applicant and his lawyer were in possession of the said letter. She submitted that, therefore, it is not true that they obtained the said document after the applicant was convicted.

She further submitted that the same letter does not exonerate the applicant from the charged offences.

Again, as regards the letter written by the Commissioner Land Registration, Counsel for the respondent submitted that it only captures issues of surveying the land and that it does not exonerate the applicant of the charged offences he was convicted of and sentenced. She prayed that this Court finds no merit in this application for leave to adduce additional evidence and that the same be dismissed.

- 4.3 I have evaluated the affidavit evidence of the applicant on the Court record in support of the applicant's application, analysed the submissions by both Counsel for the parties. It is noted that the respondent was dully served with this application and Counsel for the respondent opted not to file an affidavit in reply to this application. It is trite law that when a party makes averments in an affidavit and the opposite does not or opts not to make a rebuttal in an affidavit in reply to facts in issue, the law presumes the opposite party to have accepted the other party's averments in its affidavit as truthful.

In this instant case, though Counsel for the respondent was allowed leave to reply to the submissions by Counsel for the applicant, all the same, the applicant's affidavit evidence remained unchallenged.

From the authorities cited by Counsel for the applicant, one of the grounds for adducing additional evidence to be admitted is that the applicant should not have had knowledge of that additional evidence he wants to adduce by the time of the trial.

The applicant seeks to adduce additional evidence of letters from the Administrator General dated 31<sup>st</sup> March 2015 and that of the Commissioner Land Registration, which documents are annexed on this application. The applicant gave affidavit evidence in support of the four (4) grounds in this application. As I have already stated hereinabove, that the respondent never challenged the applicant's affidavit evidence. The respondent never filed in this Court an affidavit in reply to this application.

Further, I have perused the record of appeal of the applicant/ appellant that was filed in this Court on 7<sup>th</sup> August, 2015 and noted that PW1, for the Administrator General, gave evidence against the applicant on 18<sup>th</sup> July, 2013. The applicant gave evidence as DW1 on 25<sup>th</sup> February, 2015. The letter of the Administrator General the applicant intends to adduce as his additional evidence was written on 31<sup>st</sup> March, 2015. This letter came into existence longer after the Administrator General and the applicant had already given evidence in his case. By the time the applicant gave evidence in his case, the said evidence was not within his knowledge.

Furthermore, the letter written by Commissioner Land Registration is dated 26<sup>th</sup> June, 2015. The judgment was delivered on 28<sup>th</sup> April, 2015 and the sentence against the applicant was given on 29<sup>th</sup> April, 2015. This, therefore, means that the applicant came to possess the said letters/documents long after his conviction and sentence.

In the premises, I find that this application has merit.

**5. Conclusion**

In closing and in consideration of the grounds of this application and the applicant's affidavit evidence, the submissions by both Counsel for the parties, the law applicable to this case and my own analysis of the enter case, I hold that the applicant proved his case in this application. Accordingly, therefore, this application is allowed.

The additional evidence shall be adduced in this appellate Court in accordance with Section 41 of the Criminal Procedure Code Act, Cap.116, Laws of Uganda.

Dated at Kampala this 27<sup>th</sup> day of June, 2016.

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**Murangira Joseph**  
**Judge**

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**REPRESENTATION**

27/6/2016

The applicant and his lawyer.

Mr. Eric Muhwezi are absent.

Ms. Kyomugisha Barbra, State Attorney, for the respondent.

Ms. Margaret Kakunguru, the Clerk is in Court.

**Court:** Ruling is delivered in open Court.

Right of appeal is explained.

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**Murangira Joseph**

**Judge**

27/6/2016