



- ii) The evidence intended to be adduced will assist court to determine the dispute between the parties once and for all.
- iii) The intended additional evidence will ensure that justice is not only done but seem to be done.
- iv) The respondent shall not be prejudiced if the application is granted.
- v) It is in the interests of justice that the application be allowed.
- vi) Costs of the application.

**Background;**

2. The applicants are the appellants vide civil appeal No.63 of 2020 arising from the chief magistrate court of Nakawa at Luzira bring this application to adduce additional evidence on appeal which include a certificate of title, medical letter, LC1 chairperson letter and a letter dated 15<sup>th</sup> November 2021 which were not adduced at trial on grounds that they were not in possession of the same evidence. The respondents state that this is evidence that is to raise issues that were not raised during the trial of the main suit, further they state that the certificate of title the applicants tend to adduce as additional evidence belongs to a third party who wasn't party to the main suit.

**Applicant's evidence;**

3. The application is supported by an affidavit sworn by **Mrs.Luwanga Janet** the second applicant which sets out the grounds of the application including the following;
  - i) That the first and second applicants are unsuccessful parties in civil suit No.63 of 2015 by the chief magistrate court of Nakawa at Luzira.

- ii) That the applicants have since obtained evidence which points to the respondents' acquisition of the suit land which was not available during trial.
- iii) That the evidence intended to be adduced will assist court to determine the dispute between the parties once and for all.
- iv) That the application has been brought without undue delay.
- v) That the respondent shall not be prejudiced if the application is granted.
- vi) That its in the interests of justice that the said application be granted.

**Respondent's evidence;**

4. The application is responded to by an affidavit in reply affirmed by *Mrs.Kusima Molly* the respondent's attorney which briefly states as follows;

- i) That the applicants' application is a departure from pleadings and an abuse of court process since the interest claimed by the applicants is different from what is held by the respondent.
- ii) That part of the additional evidence the applicants intend to adduce are impugned documents for police investigations which have never been concluded.
- iii) That the names reflecting on some of the documents that the applicants tend to adduce as additional evidence were not party to the main suit Civil Suit No.63 of 2015.
- iv) That the additional evidence the applicants intend to adduce was available to the applicants at the time of trial and the same was not pleaded.
- v) That the application be dismissed with costs for being an abuse of court process.

**Representation;**

5. The applicants were not represented whereas the respondents were represented by ***Mrs. John Mary of M/s Jingo, Sempijja & Co. Advocates.*** Both Parties filed their affidavits and submissions in reply which I have considered in the determination of this application.

**Issues for determination;**

- i) Whether the applicants should be granted leave to adduce additional evidence in civil appeal no.98 of 2020?
- ii) Whether the intended additional evidence will ensure that justice is not only done but seen to be done?

**Resolution and determination of the issues;**

**Issue 1. Whether the applicants should be granted leave to adduce additional evidence in civil appeal no.98 of 2020?**

6. It is a settled principle of law that litigation must come to an end and when a litigant has obtained a judgement in courts of justice, he is by law entitled not to be deprived of that judgement without solid grounds.
7. Courts of law should not be mired with endless litigations which would occur if litigants were allowed to adduce fresh evidence at any time during and after trial without any restrictions, courts tend to be so strict in allowing a party to adduce additional evidence on appeal, thereby re-opening their case which has already been completed. On the other hand, court should administer justice and in exceptional circumstances new evidence should be allowed, a balance should be struck in weighing these two interests. (*See; Aluma Micheal Bayo & others Vs Said Nasur Okuti, Misc.App. No.12 of 2016 before Hon.Justice Stephen Mubiru. At page 2*)

8. The conditions in an application for additional evidence on appeal were restated by the supreme court in **Makubya Enock William T/a Polly Post Vs Bulaim Muwanga Kibirige T/a Kowloon Garment Industry, Civil App. No.133 of 2014** and in **Hon. Bangirana Kawoya Vs National Council For higher Education Misc.App.No.8 of 2013** where it was held that; *“an appellate court may exercise its discretion to admit additional evidence only in exceptional circumstances, which include: i) Discovery of new and important matters of evidence which, after the exercise of due diligence, were not within the knowledge of, or could not have been produced at the time of the suit or petition by, the party seeking to adduce the additional evidence, ii) It must be evidence relevant to the issues, iii). It must be evidence which is credible in the sense that it is capable of belief. iv) The evidence must be such that, if given, it would probably have influence on the result of the case, although it need not be decisive, v). The affidavit in support of an application to admit additional evidence should have attached to it, proof of evidence sought to be given, vi). The application to admit additional evidence must be brought without undue delay.*
9. In the instant application, the applicants state under paragraph 4 that they intend to adduce additional evidence which includes a certificate of title registered in the names of Mr. Katinti James which he was not in possession of during trial and that he could not access the same at the time of trial and that the said evidence is to help court to determine the dispute between the parties.
10. The respondent in her affidavit in reply under paragraph 10 states that the said evidence was available to the applicants at the time of trial and that the same was not pleaded at trial thus cannot be introduced at appellate level.

- 11.** It is a cardinal requirement that in applications of this nature that the evidence sought to be adduced should be shown to have been discovered as a new and important matter of evidence which after the exercise of due diligence was not within the knowledge of or could not have been produced at the time of the suit by the applicant.
- 12.** The documentary evidence the applicants intend to adduce includes a certificate of title, an LC1 letter, medical examination report and a letter from his lawyers, I find that the certificate of title is a document that could have been accessed by the applicants during trial from the particular lands office or through carrying out a search on the said land, the LC1 chairperson letter is a document that would have been obtained during trial from the particular LC1 chairperson of the area, the medical report is a document that is always in the docket of hospitals which can be accessed lastly the letter from the lawyers, this is a document that could have been accessed as well during trial.
- 13.** Further the applicants have not proved anywhere that they were unable to access this evidence during trial after due diligence was carried out to find the said documentary evidence. Therefore, I find that the applicants have failed to prove this ground.
- 14.** The other requirement the applicant needs to satisfy is that the additional evidence is relevant to the grounds to be decided on appeal. I have examined the nature of the additional evidence intended to be adduced at appeal and it seeks to prove that the suit land does not belong to the respondent neither does it belong to the applicants but rather a third party.
- 15.** In cases involving questions of ownership of land, the question is never ‘who is the true owner of the land’ but rather the relative strengths of the basis of the conflicting claims to ownership proved by rival claims.

- 16.** I concur with the submissions of counsel for the respondent where he referred to the decision in **Ocean Estates ltd Vs Pinder (1969)2 AC 19** by lord Diplock he stated that where questions of title arise in litigation the court is concerned only with relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B, he is entitled to succeed notwithstanding that C may have a better title than A, If C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land.
- 17.** The additional evidence the applicants intend to adduce introduces a matter that is altogether new which was never raised or does not emerge at all from the evidence already on record, if admitted evidence it will greatly alter the whole shape of the case to make the case decided on appeal entirely different from the one decided at trial therefore I don't find the additional evidence relevant to the grounds of appeal.
- 18.** The other requirement is that the application for additional evidence has been brought without undue delay. There is no express provision that defined unreasonable delay but each case is decided on its own facts. I will draw reference to the decision in **Aluma Micheal Bayo & 2 ors Vs Said Nasur(supra)** before learned Justice Stephen Mubiru where he held that, an application for additional evidence that was filed two years after the filing of the appeal be dismissed on grounds that the two years amounted to unreasonable delay.
- 19.** In the instant application, the memorandum of appeal was filed on the 22<sup>nd</sup> of December 2020 and the application for additional evidence was brought before court on the 17<sup>th</sup> of October 2022 that is nearly a two years period without furnishing any satisfactory explanation for the inordinate delay, I find this a long period amounting to unreasonable delay in filing this application. Therefore, I find that the application for additional evidence is brought after an unreasonable delay.

- 20.** I am of the view that producing new evidence at appeal would undermine the whole system of justice and respect for the law and if it were open to a party to be able to re-run a trial simply because of potentially persuasive or relevant evidence had not been put before the trial court.
- 21.** In the premises I do not find it relevant and necessary to resolve and determine the other issue since it derives its validity from the first issue
- 22.** For all the foregoing reasons, I do not find merit in the application and it is hereby dismissed with costs to the respondent.

**I SO ORDER.**



.....

**NALUZZE AISHA BATALA**

**JUDGE**

**3/11/2023**