

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE

CRIMINAL SESSION NO.29/89

UGANDA:.....PROSECUTOR

VERSUS

1. KAMUGISHA:.....ACCUSED

2. EMMANUEL BYARUGABA

BEFORE— The Honourable Mr. A. Justice J.W.N. Tsekooko

RULING

Mr. Joseph Zagyenda, learned Counsel for the accused Wishes to tender a letter dated 12th may, 1986 purporting to be written by p6 Annette Tumwebaze to Al for reasons of contradicting and discrediting pw6. (a) On her denial that she can't write anything save her own surname (b) on her denial of being girl friend of Al and (c) to show that she owes Al a grudge implicit in the denials.

The application was opposed by the learned State Attorney appearing for the state. his reasons in opposition are that (a) custody of the letter between date of writing, and now hasn't been established (b) the author of the letter has not been authenticated in as much as pw6 denies ever writing the letter and states that she doesn't know how to write apart from writing her surname (c) that the provisions of section 43 and 65 of Evidence Act have not been complied with. The question of admissibility of a piece of evidence be it oral or documentary, basically depends on whether it is relevant to the issue before the court. Otherwise the court record will be filled with all types of evidence which is not sufficiently relevant and that may prolong trial unnecessary because of immaterial matter. Among the exceptions to this statement are those set out in section 151 and 153 of the evidence act affecting the credit of a witness or as described impeaching the credit of a witness, am unable to say that these two sections apply now to this application.

The letter sought to be tendered on behalf of A1 is for purposes of discrediting Annette Tumwebaze on the grounds submitted by learned Counsel or the accused, it is otherwise not at all relevant to the trial of the accused persons in as much as its contents don't refer to the charge faced by the accused person, Tumwebaze in her testimony maintained that apart from her ability to write surname Tumwebaze she can write neither her Christian name Annette nor any other word. She was shown a statement made by her and reduced it into writing by the police in 1986 connected with this case. On it the name Tumwebaze appears. She could identify only her signature in two positions where Tumwebaze appeared. She denied being the author of the two letters shown to her inclusive of the one now under consideration and upon which the names Annette Tumwebaze appear.

In his testimony on the issue of the letter the first accused stated

“This letter was written by Twebaze. I got this letter after our relationship became sour....From those letters which she used to write to me it is in the handwriting of Twebaze. The letter bears the name Annette Tumwebaze. This name is the name of twebaze

I have noted that the signature on the letter differs from on the statement to the police at least by the addition of Annette. I note in respect to the letter what Pw5 Byamaka stated. He claimed in evidence to be a relative of both A1 and Annette (pw6) and that A1 and Annette are relatives and as such cannot be lovers (friends).

As to whether pw5 cannot write, pw7 (Agnes) stated in cross examination that she has never seen pw6 write during the period of 5 years she (pw7) stayed in butobere with A1 and pw6.

A1 has not stated that he has ever been present when pw6 was ever writing anything or any letter to A1 or to anybody else. A1's assertion that the letter in issue appears to have been written by is therefore essentially guess work. Now it is the word of A1 against that of PW6 to be judged. Pw6 is supported.

In my view there is not sufficient proof that the letter was written by Pw6 or at her behest there is nothing to link her to the letter: See Kimweri vs. Rep. 9687 EA. 452 Section 43, 45 and 65 in this respect have not been complied with.

In these circumstances of this matter I am afraid I have to rule that the letter is inadmissible in evidence. The application is rejected.

J .W .N. TSEKOOKO

15/6/1990.