

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

**HCT-05-CR-CM-009-2004**

(Arising out of HCT-05-CR-CN-67-2003)

KYERERE BESIGYE FRANK..... APPLICANT

VS

UGANDA .....RESPONDENT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

**RULING**

This application seeks for leave to adduce additional evidence at the hearing of the appeal. The evidence sought to be adduced is that of a handwriting expert engaged by the applicant. His evidence comes in the wake of the trial and conviction of the applicant but prior to the hearing of his appeal. It is not in dispute that such evidence is available. It is justification for its admission that is being contested. Happily both counsels agree in the considerations laid out in *Elgood vs Regina [1968] EA 274* which are:

- (i) the evidence that is sought to call must be evidence which was not available at the trial;
- (ii) it must be evidence relevant to the issues;
- (iii) it must be evidence which is credible in the sense that it is well capable of belief;
- (iv) the court will, after considering that evidence, go on to consider whether there might have been a reasonable doubt in the minds of the jury as to the guilt of the appellant if that evidence had been given together with the other evidence at the trial.

Mr. Okwanga, Principal State Attorney, in his submissions says that the evidence sought to be admitted was all along available at the trial in the form of exhibit P1, P E III and P X and that because there was expert evidence provided by the prosecution the defence did not find it necessary to adduce evidence of another expert. It is submitted on behalf of the applicant that counsel conducting the defence was not vigilant enough to have an expert engaged to bring out

evidence which would have been helpful to the applicant. It is prayed that that weakness on the part of the counsel should not be visited on the applicant to his detriment. What I find significant is that the evidence sought to be introduced was not available at the trial. This meets one of the considerations.

The learned Principal State Attorney further objects to the application on the ground that because the report is not credible the evidence is not credible and capable of belief. He draws his conclusion from Annexure 'C' to the applicant's affidavit where he says the expert expresses doubt in paragraph 4.4 at page 2 of the report. Respectfully I do not elicit the alleged incredulity. Consequently I do not see how it offends the third consideration in *Elgood*.

As for the falsehoods that may be apparent in the affidavit I agree with learned counsel for the applicant that if ever they exist unless they are crucial to the matter at hand they should not per se render the affidavit defective. In any case it is early days yet so far as consideration of what is in the affidavit is concerned. Again this contention should not deter the application.

Finally learned Principal State Attorney relates to the fact that the applicant admits to the signatures on all the three documents and says that in consequence there could not have been reasonable doubt in the mind of the trial court given that admission. The evidence sought to be introduced relates to anything but the authenticity of the signatures. Prudence would require the new evidence be regarded as separate to the authenticity of the signatures since the new evidence relates to other material on the questioned documents and how the material got to be there.

Having considered all the above I am satisfied the leave sought is not out of place. It is granted as well as the prayer to file an amended memorandum of appeal as a consequence.

P. K. Mugamba

Judge

19<sup>th</sup> August 2004

Applicant in court

Mr. Bezire holding brief for Mr. Kibeedi for the applicant

Mr. Okwanga Vincent for respondent

Mr. Rutazaana court clerk

Court:

Ruling read in court

P. K. Mugamba

Judge

Court:

Hearing of appeal on 20th September 2004.

P. K. Mugamba

Judge