

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISC. APPLICATION NO. 082 OF 2014
(ARISING FROM CIVIL APPEAL NO. 074 OF 2012)**

BARBARA LULE :::::::::::::::::::::::APPLICANT/APPELLANT

VERSUS

SIRIVE MUSOKE MBIDDE :::::::::::::::::::::::RESPONDENT

BEFORE: THE HON. MR. JUSTICE GODFREY NAMUNDI

RULING

This is an Application for orders that additional evidence be admitted by this Court as part of the record of Appeal. Secondly that the Memorandum of Appeal be amended. It is brought under Order 43 r.22 CPR and Section 98 CPA.

The background to this is that there were 2 matters before the Chief Magistrate – one Criminal and another Civil all based on the same facts and similar evidence.

The criminal case was based on charges of forgery, uttering false documents and conspiracy. The Civil matter was based on allegations of fraudulent acquisition of Title.

In the civil matter, the Chief Magistrate found that the Appellant/Defendant fraudulently acquired the suit property comprised in Certificate of Title for Kyaggwe Block 105 Plot 1738.

The Appellant then filed an appeal against the Judgment of the magistrate in the Civil suit. The criminal case was still proceeding.

It was on 29/8/2012 that the same Chief Magistrate acquitted the Applicant of the criminal offences referred to.

It is submitted that the Ruling in the criminal case is relevant for the determination of the Appeal in the civil matter. This is because of the conflict of decisions by the Chief Magistrate, arising out of the same subject matter. That additional evidence is allowable if it is relevant to the determination of the matter in Court.

This application has been opposed on grounds that additional evidence is only allowable if the High Court requires so. Further that the criminal matter has no bearing on the appeal, and that criminal matters have different standards of proof and hence one cannot rely on a criminal case to prove a civil matter. Reference was made to the case of **ESSO Standard Vrs. Mike Nabudere CS. 594/1992 KALR** and **Joseph Zagyenda Vrs. Uganda HCT-CM. 3/11**.

It is also submitted that the intended document does not fall within the rules laid down in **General Parts ((U) Ltd. Vrs. KunnalPradipKaria Civil Application No. 60/2010**. Finally that there was undue delay in filing the Application. That the Ruling they are relying on was delivered in August 2012 while the application was only filed in 2014 – 1 ½ years late. That the application is a waste of time intended to delay the Appeal.

In rejoinder, it was submitted that it took time to access the record of the Magistrate's Court in the criminal matter.

The General principle is that it is the interest of the state that there be an end to litigation.

The Courts should not be embroiled in endless litigation if litigants are allowed to adduce fresh evidence at any time, during and after trial without any restrictions.

On the other hand, Courts must administer justice and in exceptional circumstances, new evidence should be allowed.

The appellate Court should weigh these two interests when determining whether a party may adduce additional evidence not presented at the time of trial. The case of **Ladd Vrs. Mashall (1954)1 WLR 149** was cited where **Lord Deming** considered the following as a yardstick for allowing or refusal an application for additional evidence:

- (1) It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial.
- (2) The evidence must be such that if given, it would probably have an important influence on the result of the case though it need not be decisive.
- (3) The evidence must be such that as it may presumably to be believed or in other words it must be credible though it need not be incontrovertible.

The other consideration is that the application must be brought without undue delay.

I have considered the circumstances of the instant case.

It appears both the criminal matter and the civil matter before the same Chief Magistrate were founded on the same subject matter and facts. The only difference is that the two cases progressed at different paces and this could not have been in the control of the Applicant. The same applies to the delay in accessing the Court record in the criminal trial.

It is my finding that there was no lack of diligence in filling the application and hence the delay is explainable.

Basing on the principles as laid down in **Ladd Vrs. Marshall (supra)**, I find that the evidence sought to be adduced will have an important influence on the result of the case.

I do allow the application;

- (1) The Ruling in criminal case 506/2012 is to form part of the record of Appeal No. CA. 74 of 2012.
- (2) The Applicant is allowed to amend the Memorandum of Appeal accordingly and serve it on the opposite party.
- (3) Costs to await the outcome of the Appeal.

Godfrey Namundi

Judge

07/07/2014

07/07/2014:

Both parties present

Court: Ruling read in open Court.

Godfrey Namundi

Judge

07/07/2014