



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAROK

CRIMINAL APPEAL NO 43 OF 2018

GEORGE SIRONKA KATAMOKI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an application arising from the judgement (conviction and sentence) of Hon. T.Gesora, SPM, delivered on 17/10/2018 in the Chief Magistrate's Court at Narok in Criminal Case 651 of 2013, Republic v. George Sironka Katamoki)

RULING

1. The appellant has applied to produce additional new evidence in these appellate proceedings, pursuant to the provisions of articles 159 (d), 22, 47 and 50 (6) (b) of the 2010 Constitution and section 358 of the Criminal Procedure Code (cap 75) Laws of Kenya.
2. He therefore seeks the following orders.
 1. An order directed at the Land Registrar, Narok to produce in this court transfer forms used to effect the transfer in respect of the following parcels of land:
 1. Cis-Mara/ Olombokishi/562-from Olombokishi Ranching company to Joseph Lelu Mosingo,
 2. Cis-Mara/Olombokishi/371 – from Olombokishi Ranching company to Lesayo Ole Konko and
 3. Cis-Mara/Olombokishi/364-from Olombokishi Ranching company to Joseph Lelu Katamoki.
2. The application is based on the following major grounds. First, the appellant has now obtained evidence that he did not sign the transfer forms of the subject appellate proceedings. Second, the comparison of the signatures on the transfer forms subject of these proceedings were not that of the appellant. Third, the advocate of the appellant had requested the Land Registrar to produce these forms in court but he refused to do so.
3. In addition to the foregoing grounds in support of the application, the advocate of the appellant has deponed to a 13 paragraphs supporting affidavit. In that affidavit, he has deposed to the following major matters. He has deposed to matters that are set out on the face of the notice of motion and arguments that are the proper subject of submissions in the main appeal in court except for the following. That the said advocate has raised enough funds to pay an expert to carry out a comparison of the signatures of the appellant and those on the subject transfer forms; since the appellant had problems raising the fees of the expert. This forced the advocate on record to look for money, with which he paid the expert witness.
4. Counsel has also filed written submissions. He has submitted that an applicant for additional evidence must satisfy the followings conditions, citing in support thereof the case of ***TGC V Republic [2018] EKLR***, and the cases cited therein. Among those cases is ***Elgood v Republic [1968] EA 274***, which sets out those principles that an applicant has to satisfy, which are as follows. First, the applicant has to show that the evidence sought to be adduced was not available at trial. Second, it must be relevant evidence. Third, it must be credible evidence. Fourth, the court will after be considering that evidence conclude that it might create a reasonable doubt in the mind of the jury as to the guilt of the appellant if that evidence had been given together with the other evidence at trial.
5. Counsel has submitted that the appellant has met the threshold required for the admission of the fresh evidence. He has therefore urged the court to allow the application.
6. Ms. Nyaroita, counsel for the respondent has opposed the application. She has cited the case of ***Elgood v Republic, supra***, in support of her submissions. She has submitted that the evidence sought to be adduced was available at trial. Additionally, she has submitted that the matters raised by the appellant are matters that should be raised during the hearing of the appeal. She has therefore urged the court to dismiss

the application.

7. I have considered the submissions of both counsel. I find that the evidence sought to be adduced was available at trial. If the appellant had exercised due diligence, he could have found and produced the evidence sought to produced.

8. Furthermore, I find that the issues raised by counsel for the appellant are matters that are capable of being raised during the hearing of the appeal.

9. In the premises, I find that the application fails and hereby dismissed.

Ruling signed, dated and delivered in open court at Narok this 5th day of February, 2020 in the presence of the appellant and Ms. Torosi for the Respondent.

J. M. Bwonwong'a

Judge

5/2/2020