**Attorney-General v Ssemogerere and others**

**Division:** Supreme Court of Uganda at Mengo

**Date of ruling:** 2 September 2004

**Case Number:** 1/02

**Before:** Odoki CJ, Oder, Tsekooko, Karokora, Mulenga, Kanyeihamba and Byamugisha JJ

**Sourced by:** LawAfrica

**Summarised by:** A Adriko

*[1] Constitutional law – Appeals – Procedure – Application for leave to adduce fresh evidence after disposal of appeal – Whether such application may be granted – Grounds upon which such application may be allowed – Rule 1(3) – Rules of the Supreme Court.*

**Editor’s Summary**

On 29 January 2004, the Supreme Court of Uganda delivered its judgment in a constitutional appeal which respondents in this application had lodged challenging the decision of the constitutional court which had held that the Constitution (Amendment) Act number 13 of 2000 was unconstitutional and had not been validly passed as legislation amending the Constitution of Uganda of 1995. In its decision, the Supreme Court declared Act number 13 of 2000 unconstitutional, firstly, because it had been passed without Parliament following the proper method of voting and, secondly, because it sought to amend certain provisions of the Constitution without following the constitutional provisions on amendment of the Constitution.

On 22 July 2004, the Attorney-General filed this application imploring the Supreme Court to recall and later, vary and or review or reverse its judgment nullifying Act number 13 of 2000. The applicant argued, *inter alia* that that decision had caused a paralysis in legislative activity and that, subsequent to its delivery, evidence emerged that his counsel in the constitutional appeal number 1 of 2000 had not tendered before the Supreme Court a certificate by the Speaker of Parliament showing that Act 13 of 2000 had been passed in due compliance with the constitutional provisions on amendment of the constitution. He therefore submitted that the mistake of counsel should not be visited upon the State.

The applicant made an informal application under rule 1(3) of the Rules of the Supreme Court to be allowed to present this additional evidence to court in the course of hearing this application.

**Held** – There are no authorities on what principles or conditions a court may allow an applicant to adduce additional evidence in a constitutional application. However, decided authorities on court’s discretion to admit additional evidence on appeals can provide a useful guide and are of persuasive value.

(*Elgood v Regina* [1968] EA 274; *American Express International v Patel* application number 8B of

1986 SCU (UR), *Karmali v Lakhani* [1958] EA 567 followed.

These authorities show that an appellate court may exercise its discretion to admit additional evidence only in exceptional circumstances, which include:

(*a*) Discovery of new and important matters 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 or petition by the party seeking to adduce the additional evidence;

(*b*) The additional evidence must be relevant to the issues in the case;

(*c*) The evidence must be credible in the sense that it is capable of belief;

(*d*) The evidence must be such that it would probably have influence on the result of the case albeit it need not be decisive;

(*e*) The additional evidence sought to be adduced must be proved by affidavit supporting the application to adduce it; and

(*f*) The application to admit additional evidence must be brought without undue delay.

The Speaker of Parliament’s certificate of compliance was available at the time of the constitutional petition and the subsequent constitutional appeal number 1 of 2002. Thus, with due diligence, it could have been adduced at the trial of the petition or appeal, but it was not.

Further, the application to adduce additional evidence was made several months after the Supreme

Court delivered is judgment in constitutional appeal number 1 of 2002. Therefore it was not brought without undue delay.

Application to adduce fresh evidence dismissed. Application to vary or reverse the judgment in constitutional appeal number 1 of 2002 too is dismissed.

**Cases referred to in ruling:**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*American Express International v Patel* application number 8B of 1986 (SCU) (UR) – **F**

*Elgood v Regian* [1968] EA 274 – **F**

*Karmali v Lakhani* [1958] EA 567 – **F**

*Kawoya Joseph v Uganda* Crim App No. 50/99 (SCU) – **C**

*Npart v General Parts(Uganda Ltd.)* Misc. App No. 8/2000 (SCU) – **C**

*Sadrudin Shariff v Tarlochan Singh* [1961] EA 72 - **F**

***United Kingdom***

*Corbett* [1953] 2 All ER 69 – **F**

*Ladd v Marshall* [1954] 3 All ER 745 – **F**

*Langdale v Danby* [1982] 3 All ER 129 – **F**

*Skone v*