**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA - A.D. 2025**

**CORAM: KWOFIE JSC SITTING AS A SINGLE JUDGE**

**CIVIL MOTION**
**NO: J8A/09/2025**

**12TH JUNE, 2025**

**ERIC YAW ASANTE ….. APPLICANT/APPELLANT/APPLICANT**

**VRS.**

**THE REPUBLIC ….. RESPONDENT/RESPONDENT/RESPONDENT**

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**RULING**

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**KWOFIE JSC.**

This is a motion on notice for leave to adduce fresh evidence at the hearing of this appeal, pursuant to rule 76 of the Supreme Court Rules, 1996 (C.I. 16) which provides as follows:

*76 New Evidence*

> *"(1) A party to an appeal before the Court is not entitled to adduce new evidence in support of the original action unless the court, in the interest of justice, allows or requires new evidence relative to the issue before the Court to be adduced.*

(2) *Evidence shall not be allowed unless the court is satisfied that with due diligence or enquiry the evidence could not have been, and was not, available to the party at the hearing of the original action to which it relates*

(3) *Evidence may be given by oral examination in court, by an affidavit or by deposition taken before an examiner as directed by the court"*

From this rule, it is obvious that the major requirement is that the evidence sought to be led should not have been available during the original trial. If it was available, then it should have been led at the trial. The fundamental position arising from this rule is that the adduction of fresh evidence in an appeal is discouraged.

Therefore, for this court to permit the adducing of new evidence, that evidence should be relevant to the issue before this court and in the interest of justice. The court also has to be satisfied that with due diligence or enquiry the evidence sought to be led could not have been made available to the applicant before or during the original trial and indeed that the evidence was not available.

See: **Poku vs. Poku (2007-2008) SCGLR,** Also in the case of **Gyasi vs. The Republic (2013-2014) 1 SCGLR 410** it was held by this court that :

1) *The onus is squarely on any applicant for adduction of fresh evidence on an appeal, to satisfy the appellate court on all the laid-down principles namely:*
   - *i) The evidence must be evidence which was not available at the trial;*
   - *ii) It must be evidence relevant to the issue;*
   - *iii) It must be credible evidence, i.e. well capable of belief; and*
   - *iv) If the evidence is admitted, the court will, after considering it, go on to consider whether there might have been a reasonable doubt as to the guilt of the appellant if that evidence had been given together with other evidence at the trial.*

Also see **Dombo vs. Narh Court of Appeal, 23rd March 1970; digested in [1970] CC 68, CA; Antwi-Boasiako vs. Panin II 2013-2014 SGGLR page 264.**

What is the applicant's case in this application?

The applicant was charged with the offence of murder before the High Court, Accra and was convicted and sentenced to life imprisonment by the High Court, Accra in a judgment dated 31st August 2016. Dissatisfied with the conviction and sentence, he filed a notice of appeal which appeal was heard and dismissed by the Court of Appeal in a judgment dated 30th April 2020. After the judgment of the Court of Appeal, the applicant filed an appeal to this Court which was filed pursuant to an order of extension of time granted by the Court of Appeal.

The applicant's case in this application is that at the trial, he was not informed by this counsel or the court of his constitutional right to use reasonable force to defend his property. Indeed in paragraphs 10, 11, 12, 13 and 14 of his affidavit in support, the applicant deposed as follows:

> *"10) That I am advised by counsel and verily believe same to be true that since the deceased and two other persons jumped into my house without my knowledge or consent, they were trespassers.*
>
> *11) That when I asked the trespassers to leave my house, they refused which resulted in a scuffle and struggle for the gun which was in my possession*
>
> *12) That as a result of the struggle, the trigger of the gun was inadvertently pulled resulting in the death of the deceased*
>
> *13) That the defence available to me, which is defence of my property never came up during the entire trial.*
>
> *14) That knowledge of my defence to property was not available to me, nor could it have been available by the application of diligent search*
>
> *18) That I am advised by counsel and verily believe same to be true that, had the Court property directed the jury on the fact of trespass and of*

*unintentional killing, they would have returned a verdict of not guilty of murder."*

I should point out that the summing up of the trial judge at the High Court and the judgment of the Court of Appeal which dismissed the applicant's appeal were not even exhibited to the application: It suffices to say that the evidence sought to be adduced does not amount to new or fresh evidence. It is evidence which clearly was available to the applicant and could without much diligent effort have been given at the trial. The opportunity to be offered to lead fresh evidence on appeal is not meant to be used to concoct evidence or to strengthen a case or give an applicant a second chance at rebuilding his or her case which had collapsed at the trial.

The concept of due diligence in this regard is a question of fact to be determined on the basis of evidence already available on record when the case appears in the appellate court. The evidence sought to be adduced in this case had been available all through the trial and could have been led at the trial effortlessly. The witness sought to be called in respect of the fresh evidence Jemimia Henewaa Ahenkorah was available from the day of the incident up to the trial at the High Court and could have been called as a witness for the applicant during the trial.

Counsel did not, if at all, take advantage of the opportunity to lead that evidence at the trial due to lack of diligence or inadvertence. To seek to lead this evidence on appeal will amount to giving the applicant the opportunity to fill gaps in his case which had collapsed at the trial. The application is hereby refused.

**(SGD.) H. KWOFIE**

**(JUSTICE OF THE SUPREME COURT)**

**COUNSEL**

YAW DANKWAH ESQ. FOR THE APPLICANT/APPELLANT/APPLICANT WITH HIM NELSON OWUSU ANSAH.