

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**MISC. APPLICATION NO. 16 OF 2015**

**Coram: Kisaakye, Mwangusya, Opio-Aweri, Mwendha,  
Tibatemwa, JJSC.**

**BETWEEN**

**MICHEAL MABIKKE ::::::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**LAW DEVELOPMENT CENTRE ::::::::::::::: RESPONDENT.**

**RULING.**

This is an application brought by Notice of Motion under Article 26, 28,40(2), 42,44(c),126(1) and 2(e) of the Constitution, Sections 4, 7,11, 33, 41 and 42 of the Judicature Act; Section 80(1)(d) and 98 of the CPA , the Judicature ( Judicial review ) Rules , 2009 and Rules 2(2), 30(2) (a), 42(1), (2), 43(1), (2) and 44 of the Judicature (Supreme Court) Rules Directions.

This application seeks to adduce additional evidence in respect of Civil Appeal No. 12 of 2016 which is pending before this court. The application seeks for orders that;

1. The applicant be allowed to adduce further evidence in form of The Report of the Sub-Committee of the Respondent dated 30<sup>th</sup> November 2015 to elucidate on The Report of The Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010/2011 already filed in the High Court and the Court of Appeal to be filed in the Supreme Court of Uganda from the

7 Judgment and orders of the Court of Appeal of Uganda sitting at Kampala , Before Hon. Justices Hon. A.S Nshimye, JA, Hon. Justice Kenneth Kakuru, JA and Hon. Justice Geoffrey Kiryabwire , dated the 14<sup>th</sup> Day of May 2015 in Civil Appeal No. 51 of 2013.

14 2. That the further evidence of the Report of the Sub Committee of The Management Committee of the Respondent dated 30<sup>th</sup> November 2015 to elucidate on the Report of The Forensic Audit of the Bar Course Examination for the period of 2004/2005 to 2010/2012 already filed in the High Court and the Court of Appeal be availed by way of an affidavit to be included in the Record of Appeal to be filed in the Supreme Court of Uganda and the deponent thereof be available for cross examination by the Respondent and this honorable court on his  
21 testimonies.

28 3. If this Application is allowed, the applicant/Appellant be allowed to file an affidavit including the further evidence of the Report of the Sub Committee of the Management Committee of The Respondent dated 30<sup>th</sup> November 2015 to elucidate on the Report of The Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010/2011 already filed in the High Court and the Court of Appeal in the Record of Appeal in the Supreme Court to introduce crucial parts of this further evidence which was not available during the proceedings in the High Court and the Court of Appeal since it will assist the Supreme Court to determine the Dispute between the parties once  
35 and for all and to ensure that justice is not only done but also seen to be done and to clarify about the Applicant's /Appellant's case as the Supreme Court is the last court of instance.



4. Costs of the Application be in the cause.

7 The application is supported by the affidavit of Michael Mabikke, the applicant/appellant.

The respondent opposed the application and its Director Frank Nigel Othembi filed an affidavit in reply.

### **BACKGROUND TO THE APPLICATION.**

14 The applicant, Michael Mabikke is a legal practitioner. He was awarded a post graduate diploma in legal practice in 2010 by the respondent. In due course, there emerged allegations and complaints of examination malpractices concerning academic years 2004/2005 to 2010/2011. On receipt of these complaints, the management of the respondent appointed an Audit Committee to carry out a forensic audit of the examinations covered in.

21 After the exercise, the committee produced an audit report indicating examination improprieties regarding the Post Graduate Bar Course examinations over the said period.

When management considered the Report, it set up a Committee to conduct a detailed inquiry into specific cases of suspected examination malpractices and to review the recommendations of the forensic Audit Committee Report in connection with possible examination malpractices.

28 In 2013, the applicant and others filed an application in the High Court for judicial review seeking a number of reliefs among which was an order of certiorari to quash the report of the Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010/2011 and an order of prohibition and injunction to stop the committee set up by management from conducting a detailed inquiry into possible examination  
35 mal-practices and reviewing the recommendations of the

forensic Audit Committee. The High Court declined to grant the orders for which the applicants prayed. The appellant then  
7 appealed to the Court of Appeal which appeal was dismissed.

Dissatisfied with the decision, the applicant lodged a Notice of Appeal in this court, an application for stay of execution and an application for admitting additional evidence on court record which is the subject of this ruling.

**Grounds of the application.**

14 The Notice of Motion contained 35 grounds which we found repetitive. They are basically as follows;

- 21 1. That the Applicant /Appellant being dissatisfied with the judgment of the Court of Appeal in Civil Appeal No. 51 of 2013 Hon. Mukasa Mbidde & Hon. Michael Mabikke Vs The Law Development Centre Holden at Kampala delivered on the 14<sup>th</sup> Day of May 2015 intends to appeal against the said judgment /decision to the Supreme Court of Uganda.
- 22 2. That the Applicant /Appellant having been dissatisfied with the said judgment filed a Notice of Appeal against the said decision on the 18<sup>th</sup> May 2013.
- 28 3. That the Applicant /Appellant is in the process of compiling the certified copy of Record of proceedings of The High Court and Court of Appeal and eventually file a record of appeal including the memorandum of appeal in the Supreme Court.
- 35 4. That the new and important evidence has been discovered which shows that contrary to the respondent's evidence at the trial and preliminary hearing in the High Court and in the Court of Appeal , that no final decision had been taken by the respondent to cancel the Applicant's /Appellant's diploma in legal practice without giving him an



7 opportunity to be heard, a final decision was taken on The  
Report of the Forensic Audit of the Bar Course  
Examination for the period 2004/2005 to 2010/2011 and  
The Report of the Sub Committee of the Respondent dated  
30<sup>th</sup> November 2015 whereby the respondent's  
Management Committee sitting on the 11<sup>th</sup> February 2016  
resolved to cancel the applicant's/Appellant's Diploma in  
Legal Practice without due process, which cancellation the  
Applicant/Appellant only learnt of through the New Vision  
14 Newspaper dated 26<sup>th</sup> February 2016, where the  
respondent communicated the same in a press release.

21 5. That the said additional evidence was not in the  
applicant's knowledge by the time he had his matter heard  
in the high Court and his appeal in the Court of Appeal  
and could not be obtained even with exercise of  
reasonable diligence as the respondent through its Sub  
Committees was still allegedly investigating Examination  
malpractices in the Law Development Centre.

28 6. That the minutes of the Law Development Centre Sub  
Committee and the management Committee of the law  
Development center were only in the possession and  
knowledge of the respondent until when the  
Applicant/Appellant wrote a letter to be availed the same  
Report on the 26<sup>th</sup> August 2016 and the Secretary /Head  
Human Resource and Administration only wrote back to  
the Applicant /Appellant and availed him copies of the  
same report on the 16<sup>th</sup> September 2016.

35 7. The respondent through its management committee  
arbitrarily, unconstitutionally breached its duty of fairness  
in reaching a decision to cancel the applicant's/  
appellant's Diploma in Legal Practice based on suspicions

without concrete evidence of the alleged examination malpractices.

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8. Investigations by the Sub Committees commissioned by the respondent from 2013 and in particular 2015 to investigate allegations of examination malpractices at the Respondent for the period 2004-2011 based on Forensic Audit Report (FAR) for the said period did not make any valid findings of irregularities in its report dated 30<sup>th</sup> November 2015 or at all to justify the decision taken by the respondent to cancel the applicant's award of the Post Graduate Diploma in Legal Practice and the Respondent shall be put to strict proof for the legal basis of its said decision.

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9. The said Sub Committees were not duly constituted in accordance with the provisions of the Law Development Act and the Regulations governing the passing of the Bar Course.

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10. The applicant has never been given any opportunity of a fair hearing during the course of the proceedings of the said committees.

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11. The said Forensic report recommended criminal prosecution and withdrawal of the applicant's Diploma in Legal Practice and in Uganda one does not have a Bar Course Diploma Certificate from the respondent.

12. Even if the Applicant was meticulous in his gathering of evidence to support his case, he could not have access to the said evidence as it was in the possession of the respondent at the time of filing and hearing of the application for the Judicial Review in The High Court and the Appeal in the Court of Appeal.

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- 7 13. That the further evidence sought to be adduced is crucial and very necessary for the Applicant's case as he is asking the Supreme Court to rule on power of the Law Development Centre to recall and investigate and cancel his qualifications without affording a right of hearing and following the Rules governing the Passing of the Bar Course and rules of natural justice.
- 14 14. The said very important evidence is contrary to the respondent's claim and clearly shows that a final decision to cancel the applicant's Diploma in Legal practice has indeed been taken by the respondent without affording a right of hearing and following the Rules of Natural justice.
- 21 15. That the Respondent's Management Committee issued a report on the 30<sup>th</sup> day of November 2015 wherein they recommended the cancellation of the Applicant's Post Graduate Diploma in Legal Practice and addressed their report to the Law Council, Uganda Law Society, High Court, Ministry of Justice amongst other bodies which bodies have undertaken process of enforcing the decision as the Secretariat of the Law Council through the Law Society inviting the Applicant to attend a meeting on the 28<sup>th</sup> of September 2016.
- 28
- 35 16. The additional evidence is necessary to the applicant's case since the thrust of the respondent's case in the lower courts was that he Respondent did not revoke the Applicant's Diploma in Legal Practice, but was merely conducting an investigation and or fact finding mission after which the applicant would be given opportunity to be heard.

7 17. That if the evidence is not allowed, it will leave the respondent's affidavits and testimonies in the High Court and the Court of Appela about the cancellation of the Applicant's Diploma in Legal practice unchallenged to stand as the truth whereas not.

14 18. That the further evidence is to clarify about the Applicant and this Honorable Court being the last court of instance, it would be pertinent that it is admitted in order to meet the ends of justice, reach a fair and just decision and avoid a multiplicity of proceedings.

21 19. That the further evidence is credible since it has been obtained from the Respondent's secretary/ Head Human Resource and Administration letter dated 16<sup>th</sup> September 2016 and that this application has been without undue delay in less than sixty days of obtaining certified copies of the record of proceedings form the Court of Appeal which is in the process of being compiled to allow the applicant file his Record and Memorandum of Appeal in the Supreme Court.

28 20. That the respondent is not likely to suffer any injustice or prejudice if this application is granted since the new evidence is a record of their own proceedings of the Sub Committee and the Minutes of the Law Development Centre Management Committee.

21. That it is fair, just and equitable and in the interest of justice that the application be granted.

35 The application is supported by an affidavit affirmed by the Applicant.



## **Representation**

The applicant was represented by Mr. Semuyaba Justin  
7 whereas the respondent was represented by Mr. Tibaijuka  
Charles.

## **Submissions**

### **Appellant.**

The appellant's counsel submitted that the application is  
seeking this honorable court to allow the applicant to adduce  
The Report of the Subcommittee of the Management Committee  
14 of the Respondent dated 30<sup>th</sup> November 2015 and the Minutes  
of the Pamela Committee as new evidence to elucidate on the  
Report of the Forensic Audit of the Bar Course Examination for  
the period 2004/2005 to 2010/2011. He stated that this  
evidence is crucial and was not available during the  
proceedings in the High Court and the Court of Appeal.  
Counsel further submitted that the Supreme Court is the last  
21 court of instance in the instant matter therefore admitting  
further evidence on record shall assist the Supreme Court to  
determine the dispute once and for all.

Counsel relied on the case of **AG & IGG Vs Afric Cooperative  
Society Ltd Misc Appln .No 06 of 2012** in which the  
Supreme Court exercised its inherent powers to do justice  
under Rule 2(2) of the Rules of the court, notwithstanding the  
28 provisions of Rule 30 which would appear to deny the  
discretion of this court to admit additional evidence.

Counsel submitted that **Rule 2(2)** of the Rules of this court  
derives from the **Section 98 of the Civil Procedure Act** which  
saves the inherent powers of Court which provisions are  
reinforced by **Article 126(1) and (2) of the Constitution**.  
Counsel stated that in **AG & IGG Vs Afric Cooperative  
35 Society** the Supreme Court relied on the observations of  
Justice Oder in **GM Combined Limited Vs A.K. Detergents**

7 **SCCA No. 07 of 1998** where he said the evidence which merely elucidates on evidence already on record is not additional evidence.

14 Counsel further invited court to consider the holding in the case of **AG Vs The East African Law Society & Anor Appeal No. 1 of 2013** where court held that the new evidence would presumably add to the quality and quantity of the evidence already filed on court record. To that extent, that was no different, in its effect from adducing “more and better particulars” of the evidence already adduced and recorded in the prior proceedings.

Counsel further submitted that in exercising their discretion, their lordships are advancing the cause of the first and greatest commandment of this court namely; to do justice without undue regard to technicalities under **Article 126(2) (e)** of the Constitution.

21 Counsel further relied on the case of **Anifa Kawoya Bangirana Vs National Council For Higher Education Misc Application No. 8 of 2013**, where court observed that it was satisfied that the evidence which the applicant sought to adduce was not in her knowledge at the time of filing the Constitutional Petition and could not have become aware of it even if she had been prudent in gathering evidence to support her case. The  
28 evidence was not only relevant to the issues for determination, but also credible and capable of having an influence on the result of the appeal.

35 Counsel submitted that the applicant had applied to this court for an interim stay of execution vide **Misc Application No. 15 of 2015** where Justice Tumwesigye JSC observed that no court will condone cancellation of any body’s diploma without allowing them their right to be heard which decision the respondent failed to take heed of. He stated that while the applicant/appellant was in the process of filing a Record and



Memorandum of Appeal in the Supreme court , he was invited by the respondent's Sub Committee investigating Examination malpractices where he appeared before the same however the committee acted contrary to Justice Tumwesigye's ruling.

He stated that there was nexus between the report of the Sub Committee of the Management Committee of the Respondent dated 30<sup>th</sup> November 2015 and the Report of The Forensic Audit of the Bar Course Examination for the Period 2004/2005 to 2010/2011 already filed in the High Court and the Court of Appeal. He submitted that Hon. Justice V.T Zehukirize in the High Court held that the Forensic Bar Course Examination for the period 2004/2005 to 2010/2011 was a mere fact finding body and was not obliged to give the applicant/ appellant a right to be heard.

He stated that the new important further evidence which has been discovered shows that contrary to the evidence adduced by the Respondent in the preliminary hearing, trial Court and Court of Appeal that no final decision had been taken on The Report of The Forensic Audit of the Bar Course Examination for the Period 2004/2005 to 2010/2011 arising from The Report of the Sub Committee of The Management Committee of the Respondent dated 30<sup>th</sup> November 2015 where the respondent's Management Committee sitting on the 11<sup>th</sup> February 2016 resolved to cancel the Diploma in Legal practice without due process, which cancellation the Applicant only learnt of through the New Vision Newspaper dated 26<sup>th</sup> February 2016, where the respondent communicated the same in a press release.

He submitted that the said new evidence was not in the knowledge of the applicant at the time the matter was heard in the High Court and the Court of Appeal and could not be obtained even with exercise of reasonable diligence as the respondent through its Subcommittee was still allegedly



investigating Examination malpractices in the Law Development Centre. That the minutes and proceedings of the  
7 Dr. Pamela Committee wherein they recommended the cancellation of the post graduate diploma in Legal Practice were only in the knowledge and possession of the Respondent until when the applicant wrote a letter to be availed the same Report on 26<sup>th</sup> August 2016 and the Secretary / Head Human Resource and Administration only wrote back and availed the same report to the applicant on the 16<sup>th</sup> September 2016.

14 Counsel submitted that along with the report was further evidence that Ezadri Micheal Onyafia, Lutalo Kizito, Hon. Fred Mukasa Mbidde , Nakalembe Jacqueline Evelyn, Kagoro Friday Roberts and Kataike Florence who also sat for and completed the Diploma in Legal practice and were graduated on 3<sup>rd</sup> September 2010 were allowed to sit special examinations and were again awarded the same diplomas that were previously  
21 awarded to them in the year 2010.

He avers that the respondent addressed its report cancelling the applicant's diploma in legal practice to the Law Council, Uganda Law Society, High Court, Ministry of justice, amongst other bodies which have the authority to implement the respondent's decision. That there is a pending appeal in the Supreme Court and there is a serious threat of executing and  
28 implementing the recommendations of the Report yet the hearing and final determination of the said appeal in the Supreme Court is still pending.

But rather shall elucidate on the report already on record and its admission would avoid a multiplicity of proceedings otherwise there will be no end to litigation. That the applicant appeared before the Committee interactively and there was no  
35 accuser or accusation neither were there specific charges against him nor elaborate procedures envisaged under a hearing. He stated that Section 16(1) of the Law Development



Centre Act is to the effect that the Dr. Pamela Committee could not purport to have conducted a hearing as doing so would be  
7 in excess of its jurisdiction. That Rule 21(2) of the Rules Governing the Passing of the Bar Course, 2010 enjoins the Management committee to exercise its powers judiciously.

He further stated that the new evidence does not introduce a new cause of action as it arose out of the recommendations of the Report of the Forensic Audit of the bar Course Examination for the period 2004/2005 to 2010/2011 and the latter report is  
14 a continuation of the former. That the respondent through its Management Sub Committee acted arbitrarily and breached its duty of fairness in reaching the decision of cancelling of the applicant's diploma in legal practice. Counsel argued that even if the respondent was to apply the Regulations Governing the Passing of the Bar Course 2002 which came into force on the  
21 3<sup>rd</sup> May 2002, they do not have a provision for the particular Bar Course Examination Malpractice on this matter.

He submitted that the Law Development Act conferred powers upon The Management Committee to make Rules which it did and the rules created a verification Committee, Examiner's Board and an Appeals Committee and it is improper to delegate the duties of those committees to improper committees like the Forensic Audit Committee and a Sub Committee not properly  
28 constituted. That their actions were *ultravires* under the principle of *delegatus non potest delegare*.

That it is in the interest of justice that the new evidence be allowed so as to elucidate on the evidence already on court record and enable this court to make an informed finding for justice to prevail. The applicant proposed that court should not close its eyes to the raised issues of illegality in the new  
35 evidence.

Counsel concluded by praying court to allow the applicant/ appellants application seeking to be allowed to adduce further



evidence in form of The Report of the Sub Committee of the Management Committee of the Respondent dated 30<sup>th</sup> November 2015 Volume I, 11A and IIB and the Minutes of the proceedings of the Dr. Pamela Committee.

### **Respondent**

Counsel for the respondent opposed the application to adduce further evidence on Appeal in the Supreme Court. Counsel argued that the Supreme Court does not have discretion to take additional evidence in ordinary appeal originating from the High court as the court of first instance (second Appeals), but has such discretion in Constitutional Appeals originating from the Constitutional Court( first appeals). That in second appeal, this Honorable court must address two questions ie whether it has power to take additional evidence, and whether the circumstances of particular cases warrant the taking of such evidence.

Counsel argued that this court in the past has had a tendency of mixing up constitutional appeals with ordinary appeals and in the process, a wrong impression has been created that r. 30(1) which prohibits the taking of additional evidence in ordinary Appeals is easily displaced by inherent powers conferred by r.2(2). He argued that the authorities relied on by the applicant ie AG VS Paul **Kawanga Semogerere & ors (Supra) and Hon Anifa Bangirana Kawooya Vs National Council for Higher Education SC Misc Appln. No. 8 of 2013** are Constitutional Appeals and this court had express powers to take additional evidence. That the instant case is therefore distinguishable.

Counsel stated that the **Semogerere** (supra) case was dismissed therefore all observations made therein are abiter dicta. That this implies that the court in the case of **Anifa kawooya** (Supra) relied on obiter dicta



Counsel further referred court to **General Industries (U) ltd Vs Nonperforming Assets Recovery Trust [1999] KALR 400** where Mulenga JSC (RIP) held that;

**“This court has no jurisdiction to take additional evidence. The Appellant’s suggestion that this court invokes inherent powers to do so, is untenable because the court cannot use a general power set out in one rule to do what is specifically forbidden in another rule.”**

Counsel further submitted that assuming this court has powers to take additional evidence in the present case, there are no exceptional circumstances to warrant the taking of such evidence because of the following reasons;

That there was no discovery of new and important evidence. He argued that the applicant having realized that his case as originally filed can no longer give him an effective remedy, his strategy is now to argue out a new case that was not before the lower courts and seek for remedies that were not sought in the lower courts.

That much as it is true that a final decision has been taken by the respondent against the applicant, this new development does not in any way elucidate the Audit Report that was before the two lower courts and consequently additional evidence is not called for. Nor is court misled in any way by the absence of such evidence.

He argued that reviewing the audit report was just one among other Terms of Reference (TOR) of the DR. Pamela Committee which Committee extended to making its own independent investigation and its own report therefore there was no nexus between the two reports.

Counsel submitted that the new evidence has no relevance to the issues before the lower courts and the applicant simply wants to use such evidence to pursue new issues or causes of



action arising from the Dr. Pamela Committee. He argued that in the High Court, the applicant challenged the appointment of the Kania Committee and the report of the Forensic committee.

That the Pamela Committee stayed its proceedings until after the conclusion of the case in the Court of Appeal. That this meant that both lower courts did not consider the constitution, proceedings or report of the Dr. Pamela Committee's decision to cancel the applicant's diploma. Counsel urged court to consider the principle in the case of **Bantariza V Habre International Trading Co Ltd [2002]2 EA 315 (SCU) at pp 319-320** which is to the effect that a party is not entitled to rely on an issue or cause of Action different from her original case. He further relied on the case of **R V Sirasi Bachumira (1936)3 EACA 40 at page 41** which is to the effect that additional evidence should not be taken to fill a gap in the prosecution's case.

Counsel argued that the applicant has not attached the additional evidence thereby failing to meet the condition raised in the authorities he raised and therefore does not deserve to have the order to be made in his favor.

Counsel further submitted that the applicant delayed in bringing the application which was in breach of the condition in the **Semogerere** (supra) case. The application was brought 6 months later.

He also averred that the applicant is misleading court because in his notice of motion, he sought to adduce Dr Pamela committee report and no further evidence is sought to be adduced however his affidavit in rejoinder reveals that he intends to adduce the minutes, and the record of proceedings of the Dr. Pamela Committee. Counsel stated that this was contrary to *r. 42 and 43* of this court's rules and the ruling of **Katureebe JSC** (as he then was) in the case of **Horizon Coaches Ltd V Rurangaranga & Anor [2010]1 EA.77 (SCU)**,



at pp. 78 d & 83 c-f. In that case, the learned Justice observed as follows:-

7 “To my mind, the import of these two Rules is that when one files a formal application to Court, i.e. Notice of Motion, the grounds for that application must be stated in the body of that motion. The affidavit is evidence of facts that support the grounds that have been stated in the Notice of Motion. It is wrong for an applicant to direct this court that the grounds for his application are to be found in the supporting affidavit”.

14

Counsel also stated that the intended evidence is documentary evidence and if the applicant is allowed to adduce the evidence, it would suffice for him to incorporate it in a supplementary record of Appeal under r. 86(3)5 of the Rules of this court.

21 Counsel stated that court should note the altered condition particularly the fact that the applicant’s diploma has now been cancelled and to make the observation that his pending appeal is an exercise in futility since what had been sought to prevent has now already taken place.

Counsel prayed that the application is dismissed with costs.

### **Rejoinder**

Counsel for the applicant reiterated his earlier submissions.

### **CONSIDERATION BY COURT**

28 We have considered the background of this application, the submissions of counsel, the evidence on record, the authorities cited and the law.

It is trite that in Civil Appeals under rule 30 of the Rules of this Court, this Court does not have discretion to take additional

evidence. The general principle is that the appellate Court should not travel outside the record of the lower court and cannot take additional any evidence on appeal.

Another principle is that there must be an end to litigation. However, it is now settled that there are circumstance under which additional evidence may be taken. This is provided under Rules 2 (2) of the Rules of this Court. It provides as follows:-

**“Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the Court to make such orders as maybe necessary for achieving the ends of justice or to prevent abuse of the process of any such court.....”**

The catch word in the above provision is “nothing in these rules” shall be taken to limit or affect the inherent power of this Court. We agree that rule 30 (a) does not allow this Court to take additional evidence on appeal, however that notwithstanding, rule 2 (2) stipulates that even if a certain rule provides for a particular subject, the inherent powers shall override any provision in the rule. The duty of this Court being the last resort is to ensure that disputes between the parties are resolved to finality.

As such, for an appellate Court to admit additional or fresh evidence, this Court in **Attorney General VS Paul Kawanga Semogerere, Supreme Court, Constitutional Application No. 2 of 2004** relying on **Ladd v Marchal [1954] 3 Aller 745, 748; Skone Vs Skone (1971) 2 ALLER 582 at 586; Langdale Vs Danby (1982)3 ALLER 129 at 137; American Express International Vs Atulkimar S. Patel, Application No. 8B, of 1986**, stated that an appellate court may exercise its discretion to admit additional evidence only in exceptional circumstances which include;



- 7 i. 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;
- ii. It must be evidence relevant to the issues;
- iii. It must be evidence which is credible in the sense that it is capable of belief;
- 14 iv. The evidence must be such that, if given, it would probably have influence on the result of the case, although it need not be decisive;
- v. The affidavit in support of an application to admit additional evidence should have attached to it , proof of the evidence sought to be given;
- vi. The application to admit additional evidence must be brought without undue delay.

21 This Court continued to explain these principles as follows:-

“These exceptional circumstances have remained the stand taken by the Courts, for obvious reasons that there would be no end to litigation unless a court can expect a party to put its full case before the court. We must stress that for the same reason, courts should be even more stringent to allow a party to adduce additional evidence to re-open a case, which has already been completed on appeal”.

28 In addition, in the case of **Karmali Tarmuhamed & anr Vs I.H Lakhani & Company (1958)**, EA. 567, 568, it was held interalia that;

35 “Except on grounds of fraud or surprise, the general rule is that an appellate court will not admit fresh evidence, unless it was not available to the party seeking to use it at the trial, or that reasonable diligence would not have made it available”.



7 Lastly in **Commissioner Land Registration & another v Emmanuel Lukwajju, Civil Application No. 12 of 2016**, this court held inter alia that:-

“It is now settled that according to the decisions of this court in a number of cases including the ones cited in this application, that Rule 2(2) of the Rules of this Court gives this Court the power to admit additional evidence in so far as it elucidates the evidence already on record in order to meet the ends of justice”.

14 In order for this Rule to apply, however, the applicant must demonstrate that there are exceptional circumstances where the court, notwithstanding any provision contained in the Rules, will invoke its inherent power under rule 2 (2) in exercise of its duty as final appellate court to justify the grant of leave to adduce additional evidence. This court is guided by the principles set out in **Attorney General VS Paul Kawanga Semogerere & another (supra)**, followed in the case of **Attorney General & Inspector General of Government v Afric Cooperative Society Ltd, (supra)** setting out useful guideline in determining application for adducing additional evidence”.

28 Turning to the present application, the gist of the application is that the applicant should be allowed to introduce further evidence in the form of the report of the sub-committee of the management committee of the respondent dated 30/11/2015 to explain the Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010/2011 which was not available during the proceeding in the High Court and the Court of Appeal on the ground that it would assist the Supreme Court to determine the disputes between the parties to its logical conclusion and ensure that justice is not only done but also seen to be done.



Upon careful analysis of the submissions of both counsel, it is clear from the record that what the applicant intends to adduce  
7 as additional evidence was actually not in place at both the time of the proceeding in the High Court and the Court of Appeal. It is clear from the record that the investigation by Dr. Pamela committee and its ensuring report and the management committee's 98<sup>th</sup> meeting and its minutes were future events that had not occurred at the time of hearing before the two lower courts.

14 We also agree with the respondent that it was grossly erroneous and misleading for the applicant to state that evidence about those events was in the possession of the respondent.

The intended evidence at the time of filing and hearing of the applicant's case in the said two courts, was not available, could not be obtained by the applicant at the material time. Thus it  
21 could not be said to be crucial, necessary, credible material or relevant for the purpose of his appeal before this Court.

By the time the two lower courts considered and disposed of the applicant's case, no final decision had been made by the respondent against the applicant. Subsequently a final decision was made by the respondent against the applicant. However, it does not explain the Audit Report that was not before the two  
28 lower courts and does not fit within the additional evidence.

The respondent's decision to cancel the applicant's Diploma was passed on 26/2/2016 and the applicant sat back until 26/6/2016 when he applied for the documents that he intended to adduce as additional evidence.

We accordingly agree with the respondent's submissions that the applicant's interest is to pursue new issues or causes of  
35 action that did not feature at the trial or in the Court of Appeal. Although this court possesses power to take additional



evidence, in the present case, no such exceptional circumstances do exist to warrant the taking of such evidence.

7 In the circumstances this application must fail. We also fault the applicant for filing in court very long meandering pleadings. The pleadings were wordy, argumentative and repetitive (77 grounds) which was a blatant violation of the rules and practice of this court and is thus improper and unacceptable. A part from being unnecessarily lengthy, the affidavit also put forward grounds which should have been in the main appeal. The propriety of affidavits was recently discussed by this Court in 14 the case of *Male Mabirizi Kiwanuka v Attorney General*, Constitutional Appeal No. 2 of 2018. This Court had this to say:-

**“On the issue of whether the affidavits of the applicant are argumentative, narrative and contain hearsay and conjectures, Order 19 Rule 3 of the Civil Procedure Rules provides that:**

21

Matters to which affidavits shall be confined.

1. Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted provided that the grounds thereof are stated.
- 28 2. The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents shall, unless the Court otherwise directs, be paid by the party filing the affidavit, (underling for emphasis).

In the instant application, the affidavit in support contains 94 paragraphs and the supplementary affidavit contain 67 paragraphs. The affidavit in rejoinder contains 103 paragraphs. This makes a total of 264 paragraphs. The

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length of the affidavits by itself is not the issue but we find that the contents are argumentative and prolix. An affidavit as we understand it is meant to adduce evidence and not to argue the application. We find that the affidavits of the applicant fall short of meeting this standard. They argue the case instead of laying down the evidence to be relied on in deciding the application".

All in all, we find no plausible arguments to sustain this application to adduce additional evidence. We accordingly find that this is not a befitting case to allow additional evidence. The application is accordingly dismissed with costs to the respondent.

Dated at Kololo this *9th* day of *January* ~~2019~~ *2020*

*Kisaakye*

Hon. Justice Kisaakye, JSC

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*Mwangusya*

Hon. Justice Mwangusya, JSC

*Opio-Aweri*

Hon. Justice Opio-Aweri, JSC

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*Mwondha*

Hon. Justice Mwondha, JSC

*Tibatemwa*

Hon. Justice ~~Tibatemwa, JSC~~ *Tibatemwa - Ekirikubinza JSC*