IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2013

CORAM: ANIN YEBOAH, J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CRIMINAL MOTION

No. J8A/7/2013

8TH APRIL,2013

MAXWELL KOFI GYASI - - - APPLICANT

VRS.

THE REPUBLIC - - - RESPONDENT

RULING

ANIN YEBOAH JSC:

The applicant prays this court for leave to adduce fresh evidence on appeal. The applicant was convicted for robbery by the High Court, Kumasi and

sentenced to twenty-one (21) years.

His appeal was before the Court of Appeal Accra, and has now appealed to this Court. The applicant in the supporting affidavit has deposed to the fact that at the time he was arrested and arraigned for trail he was below

eighteen years and for that matter could not have been tried and sentenced in the manner which completely meant for adult offenders. The applicant's counsel in an effort to convince this court that the application has legal basis annexed to the affidavit in support of the application has birth Certificate and Admission Register of his school, Kumasi Modern International School and others.

It must be pointed out that even though this application was served on the Attorney-General's Office, Accra, no effort was made by the office to put in any representation in a serious matter of this nature, that is robbery. This court in the course of hearing the motion was thus left unassisted by lack of representation by the Attorney-General's Office .

In arguing the motion for adduction of fresh evidence, counsel for the applicant was of the view that the evidence which was unearthed disclosed that the applicant was indeed below eighteen years and the court which tried him lacked jurisdiction and the sentence imposed there under was also without jurisdiction. It was however pointed out to counsel that the authorities have laid down the strict rules regulating the procedure and basis for adduction of fresh evidence on appeal and drew the attention of counsel to the current authorities on the law. It was first laid down in the oft-quoted case of DOMBO & ORS. V. NARH [1970] CC 68 CA in which the Court of Appeal held that the principles should be strictly observed before the court must exercise its discretion in granting the application.

The Court of Appeal laid down the Basic principles as follows:-

(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, ie. well capable of belief.

(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 have been given together with other evidence at the trial.

It must be pointed out that the onus is squarely on any applicant for adduction of fresh evidence to satisfy the court on all the above laid down principles .

The recent case of POKU V. POKU [2007-2008] SCGLR 996 reaffirmed the above laid down principles after the Supreme Court reviewed virtually all the known authorities on the issue.

It is clear in this application that all the exhibits which learned counsel for the applicant relied on to persuade this court were indeed available at the trial. A Birth Certificate and School records obviously were all available at the time the applicant was arraigned at the trial Court. The Court of Appeal in their ruling also formed the view that the basic requirements for adduction of fresh evidence had not been satisfied and proceeded to dismiss the application.

I have also considered these exhibits and I have come to the same conclusion that these exhibits were available at the time of the trial. Indeed, learned counsel for the applicant himself said that he unearthed the exhibits after he had taken over the brief. This could

probably be lack of due diligence on the part of applicant's earlier counsel at the trial stage. It is sad that the exhibits were not made available at the trial stage but this court is not to depart from the laid down principles to allow fresh evidence to be adduced.

It is for the above reasons that I proceed to dismiss this application like the Court of Appeal. The application is thus dismissed as without merits.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

COUNSEL

AUGUSTINE OBOUR (WITH BOTAH) FOR THE APPLICANT.

NO APPEARANCE FOR AND ON BEHALF OF THE REPUBLIC.