IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- 2011

CORAM ; DR. DATE BAH J.S.C. [PRESIDING]

CIVIL MOTION
NO. J8/23/2013.

REFERENCE
NO. J6/1/2012

22ND JANUARY, 2013

APPLICATION TO ADDUCE FRESH EVIDENCE

BY COURT;

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 CI 16. From this rule, it is clear that the primary rule is that new evidence may not be adduced in an appeal, before this court. However, there is an exception which allows this Court to permit the adducing of new evidence relevant to the issue before this court in the interest of justice. However, before this Court can allow such new evidence it must be satisfied that with due diligence or enquiry, the evidence could not have been and was not available to the party applying for leave to adduce new evidence.

Accordingly, before I can grant the applicant the leave that he seeks, he has to satisfy me on several counts: First, that the new evidence he seeks to adduce is relevant to the issue or issues before this court.

Secondly, that due diligence or enquiry could not have made available to the applicant the evidence concerned, before or during the trial, and that the evidence was not in fact available to him, and finally that it would be in the interest of justice for such new evidence to be allowed.

First, let me consider the issue of relevance. The applicant's case is that during the pendency of the appeal before this court he stumbled upon a map from the room of a deceased elder of his stool. (Exhibit NAP) is a photocopy of the map. By his affidavit he states that an enquiry at Manhyia Palace discovered a similar map (Exhibit NAP II) and that an inquiry disclosed that the map was used in the determination of the 1927 case which both parties accept as having determined their boundary. The issue arises that if the map was used in the determination of the 1927 case, why does it continue to be relevant. Surely what is relevant is the 1927 judgment and not the map put in evidence before it. In any case, the respondent denies that any map was used in the 1927 case. Before this Court, counsel for the applicant has admitted that the map was not used at the trial Native Tribunal but rather on appeal.

In my view, the relevance of the map has not been demonstrated. It is the boundary of the parties as set out in the 1927 judgment that is relevant and binding and not evidence led later before an appellate tribunal.

Secondly, I do not consider that it would be just in all the circumstances of this case to lead the additional evidence proposed, particularly in the light of the fact that the respondent denies that the map in question played any part in the 1927 proceedings and the applicant has not exhibited the proceedings on appeal during which he claims the map was introduced.

Accordingly, leave is refused.

Costs of Gh¢1,000 Ghana cedis awarded against the applicant in favour of the respondent.

(SGD) DR. S. K. DATE-BAH
JUSTICE OF THE SUPREME COURT

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