

IN THE FULL COURT OF THE SUPREME COURT OF JUDICATURE
ON APPEAL FROM DECISION OF THE HONOURABLE MR. JUSTICE F.
HOLDER

APPELLATE JURISDICTION

PROCEEDINGS COMMENCED UNDER THE HIGH COURT ACT CHAPTER
3:02 SECTION 79

2018-HC-DEM-CIV-FCA-109

BETWEEN:

MOHAMED KHAN also known as MICHAEL KHAN
Appellant/ Plaintiff

-and-

THE ATTORNEY GENERAL OF GUYANA
Respondent/ Defendant

The Honourable Justices Navindra A. Singh and Gino P. Persaud

Ms. Betina Glasford representing the Appellant.

Ms. Beverly Bishop-Cheddie and Ms. Loretta Noel representing the Respondent.

Delivered February 11th 2019

DECISION

On November 29th 2018 Justice Holder granted the Respondent/ Defendant leave to reopen its case in High Court Action No. 2013-HC-DEM-CIV-W-455 and lead certain evidence.

It is from this Order that the Appellant has instituted this interlocutory appeal.

The Appellant has laid out ten grounds of appeal in his Notice of Appeal however upon careful and deliberate analysis of these grounds it is clear that the Appellant's sole contention with the course of action taken by the Learned Trial Judge is that he erred because he failed to consider the law on adducing *fresh evidence*.

By definition *fresh evidence* is evidence that may or may not have existed at the time of a trial but for various reasons was not put before the Court.

As such the concept of *fresh evidence* is a concept that is relevant when a litigant seeks to lead evidence not led at the trial in an Appellate Court.

Therefore the Learned Trial Judge was not required to consider or apply the principles or law on adducing *fresh evidence*.

In the case at bar, the Respondent/ Defendant has simply sought to lead **additional evidence** which is surely within the Learned Trial Judge's discretion to allow or disallow.

The Appellant has not demonstrated in any way that the Learned Trial Judge exercised his discretion injudiciously.

In fact, Counsel for the Appellant, in her written skeleton submissions to this Court went to great length to show that the Statement of Defence dated March 4th 2014 referenced the facts that the Defendant now wants to address with the **additional evidence** it is desirous of leading.

Insofar as the evidence sought to be led is within the parameters of the Defence pleaded it is difficult to envisage how the evidence can be unfairly prejudicial to

the Appellant and therefore how it would be possible to assert that the Learned Trial Judge exercised his discretion to allow additional evidence injudiciously.

In the circumstances, the Court finds that this Appeal is misconceived and is therefore dismissed with costs to the Respondent (Attorney General) in the sum of \$150,000.00

JUSTICE N. A. SINGH