

REPUBLIC v ADEN

(2011) SLR 5

Mulkerrins for the Republic

N Gabriel for the accused

Ruling delivered on 11 February 2011 by

GASWAGA J: This is an application to have a witness recalled to clarify a matter that he had already given in evidence. The defence is objecting and states that the witness had been properly examined by the prosecutor and also cross-examined by the defence whereupon all the necessary information vital to this case was obtained from him and placed on record.

It must be remarked that a party produces a witness in court with a view to having him adduce specific evidence in support of its case. It is not for the opposing party to tell whether all the necessary information has been adduced or not. But I agree that a party should prepare and examine the witness in such a way that all relevant evidence to the case held by that witness is placed on record before the witness leaves the stand.

Probably, I should also add that witnesses, just like counsel, are mortals. As such, you can hardly expect to find a 'perfect witness'. They are all human, and being so they generally have a defective memory. They will sometimes forget common things and details of an incident which they witnessed such as, colour, time, dates, numbers, etc. This does not necessarily mean that they are intentionally telling half-truths or outright lies. That is why the court allows witnesses to refresh their memories by looking at the statements made to the police. It is also for this reason that while assessing the credibility of the witness regard must be given to some knowledge of human weaknesses and the various influences to which a particular witness is exposed.

The prosecution has intimated that the reason the witness is being recalled is to make a clarification with regard to the date on which all the activities outlined in his testimony were conducted. Nothing more. He will not go into the heart of the evidence as this is a peripheral matter.

My reading of the Criminal Procedure Code finds no guidance as to when a party can have a witness recalled. However, section 126 allows the court at its own discretion to call any person whether already examined or not, and have him re-examined as long as it appears to the court that his evidence is essential to the just decision of the case. The other party is then given an opportunity to cross-examine such witness on that particular matter. This guards against any abuse of process and injustice that may be occasioned to the accused.

Having once again considered the submissions of both counsel on this matter, I am fortified by the above reasoning to say that if the application is granted and Mr Delfs Even (PW1) is recalled and examined on the specific aspect of the dates on which

he conducted his operation, no injustice will be occasioned to the defence. In the interest of justice, I would go further and advise the defence to even compare his testimony on the matter with the dates he recorded in the police statement. However, justice demands that a court, such as this one, mandated to administer substantive justice should not adhere to technicalities or minor and inconsequential objections or even condone trials by ambush or entrapment. It is in the interest of all parties that credible evidence is not left out but admitted in court to assist in reaching a just decision.

Accordingly the Court will exercise its discretion and in the interest of justice grant the application.