



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL PETITION NO. 14 OF 2019

STEPHEN MABILI PETITIONER

VERSUS

REPUBLIC RESPONDENT

RULING

1. The petitioner has filed a petition dated 9th October, 2018 seeking for an order of re-trial in Kakamega High Court Criminal No. 28 of 2008 where he was tried and convicted of the offence of murder. The grounds in support of the petition are that there is discovery of new and compelling evidence that was not in his knowledge during the trial.
2. The petition is supported by the affidavit of the petitioner. The petitioner contends that he was not given an opportunity to peruse the Occurrence Book during the trial process. That the Occurrence Book report was not within his knowledge until after the completion of the trial. Further that during the trial process he was not provided with statements of prosecution witnesses to enable him prepare for his defence. That failure to do so prejudiced his trial. That in the premises he was not accorded an impartial and a fair trial. That his fundamental rights were thereby violated during the trial. Therefore that the court should make an order for re-trial.
3. The State did not file a reply to the petition.
4. I have considered the petition. The petitioner was represented by an advocate, a **Mr. Nandi** during the trial. The advocate has not deponed an affidavit to the effect that he was not provided with copies of witness statements during the trial. The petitioner has not proved the assertion that he was not provided with copies of witness statements during the trial.
5. The petitioner contends that he was not given an opportunity to peruse the Occurrence Book. He has however not shown how the evidence contained in the Occurrence Book was important in the case. There is no evidence that he sought to be supplied with a copy of the Occurrence Book and the same was denied to him. There is no substance in this allegation.
6. In the foregoing the petitioner has not established the existence of new and compelling evidence that can persuade this court to order a re-trial. As to what constitutes such evidence, see **James Mwaniki Kamau –V- Republic (2018) eKLR** and **Philip Mueke Maingi –V- Republic (2017) eKLR**.
7. During the hearing of the petition, the petitioner stated that what he was seeking is re-sentencing. However this is not the application that was before court. The application before court was for an order

for re-trial. He cannot change a petition for re-trial to one of re-sentencing during the hearing of the petition. He ought to have filed an application for re-sentencing if that is what he wanted.

8. The upshot is that there is no merit in the petition dated 9th October, 2018. The same is dismissed. The petitioner is at liberty to file an application for re-sentencing.

Delivered, dated and signed at Kakamega this 30th day of September, 2020.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Mutua for State/Respondent

Petitioner – Present through video link to GK Prison, Kakamega

Court Assistant - Polycap

14 days right of appeal.