



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC. CRIMINAL CASE NO. 54 OF 2015

DAVID KOOME MUGIRA.....APPLICANTS

MARTIN MBAE

VERSUS

REPUBLIC.....RESPONDENT

RULING

David Koome Mugira and Martin Mbae vide summons dated 3rd December 2015 sought that the court declares that their constitutional rights had been breached and that their trial be started a fresh.

The death sentence passed upon them in Nkubu SRM's court CR. C. No. 835 of 2006 was committed to life imprisonment after their appeals in H.C. CRA No. 95 of 2009 at Meru and Cr. Appeal No. 14 of 2011 at Nyeri were dismissed for being devoid of merits.

It was their ground that evidence of PW3 was extracted from the proceedings and their defeating the interests justice. They also claimed that S. 169 of the Criminal Procedure Code was flouted.

They said they had new and compelling evidence to adduce before the court during the hearing of the application and that if orders sought are not granted their fundamental rights and freedoms will be violated and taken a way hence defeating the sense of Justice.

During the hearing on 22.10.2018 both applicants sought to be resented. The state through Mrs Mwathi submitted that the applicants didn't tender any new evidence that meets the threshold for resentencing and/or application under Article 50(6) of the constitution.

This court finds that the application has not been based on any evidence at all and there is therefore no basis upon which orders sought can be granted. Applicants had been sentenced to suffer death as provided by the law. That sentence was committed to life imprisonment. The Mutuatetu case which I suspect they now rely upon to seek an order of resentencing death with mandatory nature of capital offences which was declared unconstitutional. Being that the applicants are now not facing death sentence and being that they have not given any evidence that would justify this. Court reviewing the sentence passed on them and committed, the application is dismissed.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED THIS 24TH DAY OF JANUARY 2019

In the presence of:

CA: KINOTI

Applicant: A1- PIP: A2 - PIP

Respondent: Ms Mwaniki for state

HON. A.ONG'INJO

JUDGE