

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. APPLICATION NO.28 OF 2017

JOSEPH MUTSOTSI OPANDA.....1ST APPLICANT

JULIUS MUTEMI KILONZI.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The application before me is a notice of motion where the applicants are seeking a fresh trial citing contravention of Articles 165(3) (b) (c) 7 and 22 and 259 of the Constitution.

2. The **1st Applicant Joseph Musotsi Opanda** withdrew from the application. **Julius Mutemi Kilonzi the 2nd applicant** proceeded to argue his application stating that he had been charged with the offence of robbery with violence and sentenced to 20 years and he is now seeking help.

3. **Mr. Oimbo State Counsel** objected to the application on grounds that this Court cannot sit on appeal in Case already decided by a Court of concurrent Jurisdiction and that redress if any is only available in the Court of Appeal. He urged for the application to be dismissed.

4. The application before me is scanty with information. However, from the heading it appears that the applicant was initially charged in Bungoma Criminal Case Number 201 of 2004 and he then appealed to the High Court in Criminal Appeal No.178 of 2014.

5. He has not stated what happened to the appeal in the High Court. If the same were dismissed then his redress lies in the Court of Appeal.

If the same is pending he has an option of setting it down for hearing where he can seek for a retrial.

6. I agree with the State that this Court cannot sit on appeal or entertain the application as it stands as the same cannot succeed.

It is therefore dismissed.

DATED and DELIVERED at BUNGOMA this 22nd day of February, 2018

ALI-ARONI

JUDGE