



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

PETITION NO. 14 OF 2016

GREGORY MUTUMA MBAKA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

Gregory Mutuma the petitioner herein sought by a petition filed on 16th September 2016 seeking to be referred back to the Magistrates court for retrial as provided under Article 50(6) of the Constitution of Kenya 2010 as he had discovered view and compelling evidence which he intended to adduce and which he believed if heard can change the whole verdict of the lower court, the High Court and Court of Appeal.

In his submissions the petitioner urged the court to rely on the Supreme court of Kenya petition No. 15 and 16 of 2015 which declared the mandatory nature of the death sentence unconstitutional. He analysed the evidence that was already tendered in the trial court.

The Respondent through Mrs Mwathi, it was submitted that the petitioner had a duty to produce new and compelling evidence to warrant an order for retrial under Article 50(6) of the Constitution but there is no affidavit by the alleged PW4 who in the trial said categorically that he identified petitioner who robbed him.

It was submitted while relying on the authority of Peter Manson Okeyo vs Republic (2014) eKLR that the new and compelling evidence must be shown to be favourable to the petitioner and must also persuade the court to reach an entirely different decision from the 2 already reached by the 2 appellate courts.

That the evidence must be admissible, credible, cumulative and/or impeaching. Further that the evidence must not have been available during trial or could not have been obtained with reasonable intelligence or due diligence for use at trial. Mrs Mwathi urged the court to dismiss the petition.

Indeed the petitioner has not attempted to produce any new evidence at all and this petition cannot be sustained.

However, in view of the Supreme Court of Kenya finding in petitions No. 15 and 16 of 2015 this court has decided to consider the evidence in the lower court to consider whether circumstances of the offence warranted the punishment of death penalty or any other punishment could be meted out.

In consideration that the petitioner has been in custody for considerable period of time it is the opinion of this court that he should benefit from the interpretation of the Supreme court in petitions No. 15 and 16 of 2015. Petitioner is therefore resented to serve 20 years imprisonment. The death sentence is set aside. The 20 years to run from today's date. Order accordingly.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 31ST DAY OF MAY 2018.

In the presence:

Petitioner: Present in person

Respondent: Mrs Mwathi for state.

Penina: C/A

Orders

Copy of judgment to be supplied to petitioner.

HON. A.ONG'INJO

JUDGE