

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

MISC. APPLICATION NO. 12 OF 2018

WYCLIFFE OMATTO MASESE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the Judgement and Decree of Hon. N. Kahara – SRM

delivered on 14th September 2017 at Keroka Law Courts)

RULING

The Applicant in this case filed a Notice of Motion dated 24th April 2018 seeking leave to appeal out of time. The grounds for the application were that he became ill and was not in a position to appeal immediately after the conviction. He annexed a petition of appeal to the application. However, this morning he abandoned that application and opted instead to urge the Court for a fresh trial, his only ground being that he feels he did not get a fair hearing during the trial.

The application was opposed. Mr. Ochieng, the Prosecution Counsel submitted that as the Applicant had not demonstrated that he had new and compelling reasons, his application could not succeed.

I have considered the application and the submissions by both sides.

The right to a new trial is enshrined in Article 50 (6) of the Constitution. That right accrues even where the Applicant did not prefer an appeal. This is as provided in Article 50 (6) (a) which states:-

“(a) the person’s appeal, if any, has been dismissed by the highest Court to which the person is entitled to appeal or the person did not appeal within the time allowed for the appeal;...”

The right to a new trial while it accrues to the Applicant is however not automatic. Sub-article (b) provides that he must demonstrate that new and compelling evidence has become available. In the instant application, the Applicant stated that his only ground is that his trial was not fair. In my view that is not new and compelling evidence and if anything it is a ground for appeal. Moreover he did not tell the Court, even upon much prodding, why he thought his trial was not fair and he did not avail the proceedings of his case. In the absence of new and compelling evidence this application lacks merit and is dismissed.

It is so ordered.

E. N. MAINA – J

17/07/2018

Delivered in open Court in the presence of Mr. Ochieng for DPP and the Applicant.

Interpreter – Millicent

E. N. MAINA – J

17/07/2018