

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIMINAL CASE NO. 52 OF 2014

MICHAEL MURIITHI APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

I have considered the application by the Applicant by way of a Motion on Notice filed on 18th November, 2014.

The Motion does not disclose what the Applicant is seeking. However, a close scrutiny of the Supporting Affidavit shows the following:-

(a) that the Applicant was convicted for attempted robbery with violence and sentenced under Section 296/2 in Meru CMCC No. 546/00. That two appeals arising therefrom, to wit, Meru High Court Criminal Appeal No.240 of 2007 and an appeal to the Court of Appeal at Nyeri were dismissed.

(b) The Applicant claims that he was not accorded a fair trial under Article 50 (2) (6) B (sic) of the Constitution. That he has used compelling evidence. The application in my view is fatally defective and does not lie for the following reasons:-

(1) The application should have been by way of a Petition under Article 50 of the Constitution for the Petitioner to specifically seek that his case be reconsidered by virtue of new evidence he has. The present motion does not disclose what the Applicant is seeking.

(2) The new evidence allegedly available should be disclosed by way of sentenced under Section 296/2 in Meru CMCC No. 546/00. That two (2) Appeals, arising therefrom, to wit, Meru High Court Criminal Appeal No. 240 of 2007 and Nyeri Court of Appeal were dismissed.

When this Court called for the subject records, it transpired that the Criminal Appeals for this Court in 2007 reached 210. Therefore High Court Criminal Appeal No. 240/2007 does not exist.

Accordingly, the Deputy Registrar is directed to confirm from the Applicant and the Prisons authorities, the correct records upon which the Applicant was sentenced and jailed and report to this Court before the next mention date.

Mention on 12/10/2017.

DATED and DELIVERED at Meru this 22nd day of June, 2017.

A. MABEYA

JUDGE

22/06/2017