



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**MISC CRIMINAL APPLICATION NO. 5 OF 2016**  
**DOUGLAS KINYUA NJERU.....APPLICANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

1. **DOUGLAS KINYUA NJERU**, the Petitioner herein had been charged with four counts of robbery with violence contrary to **Section 296(2)** of the **Penal Code** before **Chuka Principal Magistrate's Court Criminal Case No.766 of 2009**. He was found guilty of all the four counts and convicted and sentenced to death in respect to the 1<sup>st</sup> count while the sentences in counts two, three and four were suspended or left in abeyance considering the nature of the sentence. He was dissatisfied and appealed to the High Court vide Meru High Court Criminal Appeal No. 119 B of 2010 where the High Court in Meru set aside the conviction in count one and two but upheld the conviction in count three and four. He was also aggrieved and preferred an appeal on 28 of 2013. The Court of Appeal dismissed the appeal on merit and upheld both the decisions of the lower court and the superior court.

3. The Petitioner has now in the exercise of his constitutional right under **Article 50(6)** brought this petition requesting for a retrial on the following grounds namely:-

- (i) That his right to a fair trial was breached***
- (ii) That this court has the jurisdiction to entertain this petition.***
- (iii) That the prosecution case at the trial was flawed with inconsistencies and a lot of doubts.***
- (iv) That this court should evaluate the evidence afresh.***
- (v) That he was unrepresented at the trial which in his view led to his conviction.***
- (vi) That he has new and compelling evidence as envisaged under Article 50(6) of the Constitution.***

3. The petition is supported by an Affidavit by the Petitioner filed together with the petition though the same was not properly sworn before a commissioner for oaths or a magistrate. I have however considered the contents of the Affidavit. This court observes that the Petitioner's learned counsel requested to make representations concerning this petition through written submissions. They were given 14 days on 25<sup>th</sup> April 2017 but on 19<sup>th</sup> June, 2017 when the petition came up before this court, no submissions had been filed forcing this court to assume that the petition had no useful submissions to make.

4. This court has considered the substance of the petition and finds that the petition does not meet the constitutional threshold. Under the provisions of **Article 50(6)** of the **Constitution of Kenya 2010**, the constitution provides for extensive rights to guarantee the right to a fair trial to any person charged in court and that right under **Article 50(6)** also extends to a convicted person as it provides for an opportunity to a fair trial in some instances. The instances provided are as follows:-

***"A person who is convicted of a criminal offence may petition the High Court for a new trial if;***

***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 appeal; and***

***b. new and compelling evidence has become available. "***

There is no doubt from the record that the Petitioner have had pursued his appeal to the Court of Appeal which is the highest court then envisaged in criminal matters. However, the second and important requirement in the cited constitution provision is missing in this petition. The Petitioner has only cited grounds which he obviously exhausted and were spent in the appeal he preferred but he has not cited any new evidence at all leave alone compelling evidence. The law requires him to not only show that he has new evidence but he must show that the same is compelling enough and were not within his knowledge at the time of the trial and were not considered by the trial court. This is the position clearly illustrated by the Supreme Court in the case of **KABISU -VS- REPUBLIC [2014] KLR SCK**.

In the premises, this court finds no merit in the petition dated 22<sup>nd</sup> February, 2016. The same is dismissed.

**Dated and delivered at Chuka this 24<sup>th</sup> day of July, 2017.**

**R. K. LIMO**

**JUDGE**

**24/7/2017**

Judgment dated, signed and delivered in the open court in the presence of Mutani holding brief for Kaaria for the Petitioner and Machirah for Respondent.

**R.K. LIMO**

**JUDGE**

**24/7/2017**