

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC CRIMINAL APPL. NO.59 OF 2014

SAMWEL MUHONI TUNDAAPPLICANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

1. The petitioner herein was Charged with the Offence of Robbery with Violence. He was convicted by the lower court and sentenced to suffer death. His appeal to the Court of Appeal was equally dismissed.
2. He has then petitioned this court under the Provisions of Article 50(6) of the current constitution. The same is premised on the fact hat there ought to be a new and compelling evidence which had the court considered it would have arrived at a different finding.
3. This position was upheld in the case of **TOM MARTINS KIBISU VRS REPUBLIC (2014) eKLR** by the Supreme Court.
4. The petitioner's oral submissions centres on the fact that the occurrence Book was not produced and that some witnesses were not called to testify and that he was not supplied with the statements during trial.
5. The learned State Counsel opposed the petition arguing that there was no new and compelling evidence and that all the issues presented by the appellant were within his knowledge.
6. I have perused the judgment in particular of the Court of Appeal and its clear that the appellant changed his plea of not guilty after 5 witnesses had testified. On this ground alone the petition is a non-starter. He well admitted the offence and he cannot now turn around and argue otherwise. In any event the issues he raised were well within his knowledge.
7. I find this application unmeritorious and the same is disallowed.

Dated, signed and delivered this 31st March, 2016.

H. K. CHEMITEI

J U D G E

In the presence of:

.....for state

.....for applicant