



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL MISC.APP.NO.81 OF 2015

CHARLES OGERO BOSIREAPPLICANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

1. The petition herein is premised under the provisions of Article 50(6) of the Constitution as read with Article 165 as well. The petitioner was charged and convicted on an Offence of Murder.

2. His appeal to the Court of Appeal was dismissed on 22/3/2012.

His petition raise three issues, namely:

- a) the sentence was excessive;**
- b) the charge sheet was defective**
- c) the police did not carry out proper investigations.**

3. During his submissions the petitioner essentially reiterated issues which he ought to have raised during trial. He for instance submitted that the court forced him to give an alibi defence and that his entire defence was ignored.

4. The learned state counsel opposed the petition arguing that there was nothing new and that all the issues he has raised ought to have been deliberated upon by both Superior Courts.

5. For such a petition to succeed there must be sufficient “new and compelling evidence” which was described by the Court of Appeal in **TOM MARTINS KIBISU VRS REPUBLIC (2014) eKLR** as:

“evidence that was not available at the time of the trial or could not have been availed upon exercise of due diligence and evidence sufficiently weighty that if it was available to the trial or the appellate courts the conviction would probably not have been sustained.”

6. The three issues raised by the petitioner herein cannot be termed to be new. The question of how the investigation was carried out by the police and whether the charge sheet was defective or not cannot be termed to be new. All the above issues and those submitted by the petitioner cannot be termed new and compelling evidence. They were within reach. He knew them during the substantive trial as well as on appeal. In any event the petitioner was represented by counsel on both trials.

7. Finally, the decision by the Court of Appeal came after the promulgation of the current constitution which establishes the Supreme Court. There was nothing to stop the petitioner from seeking redress from the Supreme Court.

8. Consequently, I do not find merit in the said petition and the same is hereby dismissed.

Dated, signed and delivered this 23/3/2016

H. K. CHEMITEI

J U D G E

IN THE PRESENCE OF:

.....for state

.....for applicant