



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
CRIMINAL APPEAL NO. 84 OF 2015

PAUL GICHUKI NJUGUNA ...APPELLANT/APPLICANT

-VERSUS-

REPUBLICRESPONDENT

R U L I N G

1. The Appellant's Notice of motion filed on 9th December 2015 sought two key prayers namely:
2. **THAT this court be pleased to receive in evidence the pre-recorded witness statements of PW1 (Jonathan Gichu Kanyango), PW2 (Eunice WE. Kanyango), PW3 (John Mbichu Njuguna), PW4 (Lucy Mumbi Manji) and PW5 (Samuel Kamau) obtained from police records and used in prosecution of the appellants.**
3. **THAT this honourable court be pleased to grant leave to the Appellant/applicant to amend the Memorandum of Appeal filed on 2nd June 2015.**

It is expressed to be brought under Sections 350 (2) (iv) and 358 of the Criminal Procedure Code.

2. The 3rd prayer was not opposed by the DPP represented by Mr Kibelion. However, the 2nd prayer was. Grounds relevant to the said latter prayer are set out on the face of the application as follows:-
5. **“ THAT the applicant has now retained an advocate who upon perusal of the court record had established that the prosecution did not provide the accused with pre-recorded witness statements of the prosecution witnesses not were the same produced in court which culminated to grave injustice against the accused persons and denied them a fair trial.**
6. **THAT article 50 (2) (c) requires that an accused person be given adequate time and facilities to prepare and mount a defense.**
7. **THAT the advocate has not applied to the court and an order given for the said statements to be availed to the accused and which have now been availed;**
8. **THAT it is clear from the statements provided that none of the prosecution witnesses could identify the suspects at the time the statements were recorded not was the description of the suspects given. Nevertheless, the witnesses purported to identify the accused in the unfavorable conditions of the dock.**
9. **THAT no identification parade was ever conducted.**

The grounds are further reiterated in the affidavit sworn by the applicant's advocate Peter Gichuki King'ara.”

3. I have considered the rival arguments canvassed in respect of the second prayer in light of the proceedings of the lower court.
4. For reasons that will be given in the Judgment on this Appeal, I am not satisfied that in hearing this appeal it is necessary to take the proposed additional evidence. Accordingly the 2nd prayer is rejected.
5. I will therefore allow the 3rd prayer and direct that an amended petition of appeal be filed within 14 days of today's date.

Delivered and signed in Naivasha this 18th day of March, 2016

In the presence of:-

For the Applicant

For the Respondent

Court assistant Baraza

C. W. MEOLI

JUDGE