

REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

CRIMINAL APPEAL NO. 88 OF 2014

BETWEEN

DICKSON MUGOSI MATIKO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence in Criminal Case No. 420 of 2008 of the Senior Principal Magistrate's Court at Migori by Hon. E.A. Awino, Ag SPM delivered on 16th April 2009)

RULING

1. The appellant, **DICKSON MUGOSI MATIKO**, was the accused in *Migori SPM Criminal Case No. 420 of 2008*. He was charged with robbery with violence. The particulars of the offence were that on 5th September 2008 at Isebania Township, Kuria District he, jointly with others not before the court, while armed with AK 47 rifles robbed Mohammed Hashi of Kshs. 964,700/=, 75 USD and TZ Shs. 200,000/= and at or immediately before or immediately after such robbery used actual violence by shooting one **Samuel Ongono Omwege**. He was tried, convicted and sentenced to death on 16th April 2009.
2. After conviction he lodged an appeal to the High Court to wit, *Kisii Criminal Appeal No. 204 of 2009*. The appeal was heard by Sitati and Muriithi JJ., who dismissed it on 31st July 2014. The appellant did not appeal to the Court of Appeal.
3. He thereafter filed a Notice of Motion on 30th July 2013 at the High Court at Kisii being *HC Misc. Criminal Application No. 64 of 2013*. The application is not very clear as to what it seeks but it recites the provisions of **Articles 21, 22 and 26** of the Constitution. The supplementary affidavit in support of the application refers to "**CA Rule 42**" and the appellant seeks to be allowed to lodge the appeal out of time. In addition, the appellant has filed a petition of appeal in which he contests the appellate decision affecting the subordinate court judgment. Unfortunately, when the file was transferred to the High Court at Migori, it was opened as the above named appeal.
4. The appellant filed supplementary grounds in support of the application and the petition of appeal. In the grounds, which he relied upon at the hearing, he raises various issues concerning the judgment in the subordinate court. In summary, the appellant contests the evidence of identification the learned magistrate relied upon to found the conviction.
5. Having considered the application, the petition of appeal and the facts, it is clear that this court cannot entertain any challenge to the subordinate court decision once his first appeal was heard and determined. It is apparent that the appellant intended to move the Court of Appeal for extension of time to lodge a second appeal and he is at liberty to do so in that court.
6. In the circumstances, this court lacks jurisdiction to determine any other matter and consequently the Notice of Motion filed on 30th July, 2013 is struck out. The applicant is informed of his right to lodge an application for extension of time to file an appeal against the appellate decision of the

High Court in the Court of Appeal.

DATED and DELIVERED at MIGORI this 18th day of June, 2015

D. S. MAJANJA

JUDGE

Appellant in person.

Ms Owenga, Senior Prosecuting Counsel, instructed by the Office of the Director of Public Prosecutions.