



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CRIMINAL APPLICATION NO.10 OF 2014

ERASTUS IMBUSIAAPPLICANT/PETITIONER

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

1.The petitioner was charged with the offence of defilement of a girl aged under 14 years. He was sentenced to life imprisonment. His appeals to the High Court and the Court of Appeal were unsuccessful.

2. The petition herein is filed pursuant to Article 50(6) of the current Constitution which states that

“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 which person is entitled to appeal, or the person did not appeal within the time allowed to appeal and**
- b. **new and compelling evidence has become available.”**

3. Having heard the parties herein orally as well as read the petitioner's application there is nothing in my view that can be termed new evidence. The applicant has not shown the court any iota of such evidence and the only contents of his affidavit are narratives.

4. In **TOM MARTINS KIBISU VRS REPUBLIC 2014 e KLR**, the Supreme Court stated as follows:

**“we are in agreement with the Court of Appeal that
under Article 50(6), “new evidence” means “evidence
which was not available at the time of trial and which
despite exercise of due diligence, could not have been
availed at the trial “ and compelling evidence “implies”**

evidence that would have been admissible at the trial, of high probative value and capable of belief and which, if adduced at the trial would probably have led to a different verdict.”

5. In light of the above observation I do not find any merit in the petition and I shall proceed to dismiss it.

Dated, signed and delivered this 27th July, 2015

H. K. CHEMITEI

J U D G E