

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CRIMINAL APPLICATION NO.61 OF 2013

DANIEL WESONGA MWITA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The petitioner was convicted and sentenced to life imprisonment. His appeals to this Court and the Court of Appeal failed. He is now seeking another chance pursuant to the provisions of Article 50(6) of the Constitution namely that there are new and compelling evidence which we should consider.

2. The substantive argument by the petitioner was that at the time of the offence he was under-age. We do not find this a new ground as the Court of Appeal on this ground rendered itself as follows:

“..... However with regard to sentence, we agree with the learned_Principal State Counsel that Daniel and Joseph, the second and third appellants respectively, were indeed under the age of 18 at the time of the offence and accordingly, we substitute their sentence of death, with an order that they be detained at the pleasure of the President.”

3. Obviously the Court of Appeal determined this ground and it is not for us to sit as an appellate court. If the petitioner was unhappy he ought to have proceeded to the Supreme Court.

4. Neither is it true as submitted by the petitioner that he did not have counsel during the entire trial. The petitioner ought to have raised this issue both at the trial court and in the Court of Appeal.. In any event he was well represented by a counsel in the Court of Appeal.

5. We have said much to show that there is no new and compelling evidence. The petition is otherwise dismissed.

Dated, signed and delivered this 27th day of October, 2015

H. K. CHEMITEI

E. N. MAINA

J U D G E

J U D G E