

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CRIMINAL APPLICATION NO.71 OF 2014

EDDY OTIENO ONGOMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The appellant was charged with the offence of Robbery with Violence and sentenced to death. His appeal to this Court and the Court of Appeal failed. The sentence of death was later commuted to life imprisonment.
2. He has filed this petition dated 24.7.14 under the provisions of Article 23(1)(3)(f) as read with Articles 50(6) of the Constitution. The said Articles of the Constitution permits a party to seek a fresh mandate of this Court to order a retrial. The basic reason that one ought to exhibit is that there ought to be new and compelling evidence which has been discovered after exhausting all the appeals.
3. We note from the appellant's submission that the only reason he is asking the court to order a fresh trial is due to the fact that during trial at both the lower court and this Court he lacked legal representation. Apparently in the Court of Appeal the petitioner was well represented though according to him he did not have confidence on the counsel.
4. Respectfully we do not find the above reason plausible. The only offence that has been made mandatory by our statutes that one has to be provided with a counsel is Murder. Although it is a constitutional right for one to be represented, the same is not obligatory in other offences.,
5. In this matter the petitioner at no time requested for legal representation and denied. No evidence whatsoever has been presented before us. In any event his co-appellant at the High Court was well represented. What was difficult for him to have requested for counsel then?
6. In the premises we do not consider this a new and compelling evidence as envisaged by Article 50(6) of the Constitution. The petition is hereby 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