

IN THE HIGH COURT AT MIGORI

CRIMINAL APPEAL NO. 30 OF 2014

BETWEEN

SAMUEL MUHONI TUNDA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Although the application before the court is styled as an appeal, it is essentially a Notice of Motion dated 6th June 2014 filed by the applicant and supported by his own deposition. The application and affidavit are not very clear as what he seeks but he states that his constitutional rights were violated when he was brought to court later than 24 hours upon after his arrest.
2. When the matter came up of hearing, the applicant urged the court to reconsider the sentence imposed upon as he had exhausted all his appeals. Although his application does not contain a record of previous proceedings, I called for the record and it disclosed as follows.
3. The appellant was charged in *Migori Principal Magistrates Court Criminal Case No. 621 of 2005* for the offence of robbery with violence contrary to *section 296 (2) of the Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars of the offence were that on the 12th day of May, 2005 at Nyabasi North Location in Kuria District within Nyanza Province, jointly with others not before court and while armed with swords and rungu robbed Daniel Moi Ginono of a camera, sport light, clothes and cash, Kshs.300/-, all valued at Kshs.9,500/= and at or immediately before or immediately after the time of such robbery used actual violence to the said Daniel Moi Ginono.
4. He was tried before the subordinate court. He was convicted and sentenced to death as required by law. He appealed to the High Court at Kisii in *HCCR Appeal. Nos. 177 of 2005, 129 of 2006 and 130 of 2006 (Consolidated)*. The appeal was heard and dismissed by Karanja and Musinga JJ., by a judgment dated 21st October 2008.
5. He lodged a second appeal to the Court of Appeal; *Kisumu CA Criminal Appeal No. 88 of 2009*. It was heard by Omollo, O’Kubasu and Visram, JJA., and dismissed on 2nd November 2011.
6. Apart from **Article 50(6)** of the Constitution which entitles a person convicted of a criminal offence and who has exhausted all avenues of appeal to petition the High Court for a new trial where there new and compelling evidence available, the High Court is not permitted, either by the Constitution or by statute, to intervene in a conviction and sentence passed by the subordinate court and confirmed by the High Court and Court of Appeal on the ground of violation of any other fundamental rights and freedoms.
7. As the applicant had been convicted and his conviction affirmed by two appellate courts, this court cannot entertain the application which seeks to vindicate his rights allegedly violated at the time of his arrest.
8. I therefore strike out the Notice of Motion.

DATED and DELIVERED at MIGORI this 21st day of November 2014

D.S. MAJANJA

JUDGE

Applicant in person.

Ms Owenga, Principal Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the respondent.