



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO.196 OF 2014

BETWEEN

SIMON KARIUKI MWANGI.....PETITIONER

AND

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION.....2ND RESPONDENT

JUDGMENT

Introduction

1. This Ruling is limited to the issue whether the Petition undated but filed on 23rd April 2014 can be heard without the proceedings in **Nairobi CM's Court Criminal Case No.395 of 2007** being availed to the Parties and the Court.
2. The Petition, for avoidance of doubt, is premised on **Article 50(6)(b)** of the **Constitution** and the Petitioner seeks a fresh criminal trial in the Chief Magistrate's Court because new and compelling evidence has allegedly become available to him.
3. From the record, the proceedings in **CM's Court Criminal Case No.395 of 2007** have never been availed but it would seem that neither the Petitioner nor the Respondent has made any serious effort to procure them.
4. I was initially minded to determine the Petition without the proceedings but on reflection, no fair determination of the Petition can be made without those proceedings.
5. In the event, I will order as follows;
 - (1) Let the Deputy Registrar of this Court personally make all efforts to trace and produce the said proceedings within 30 days.
 - (2) This matter shall then be mentioned on a date to be agreed between the Parties for further orders and directions including whether this Court can take any other lawful action other than the hearing of the Petition aforesaid without the said proceedings being availed to it.

6. Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 18TH DAY OF DECEMBER, 2014

ISAAC LENAOLA

JUDGE

In the presence of:

Kariuki – Court clerk

Petitioner present in person

Order

Ruling delivered and mention on 22/1/2015. Production order to issue.

ISAAC LENAOLA

JUDGE