

REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Criminal Application 74 of 2012

MUTONYAH KARIUKI APPLICANT

V E R S U S

REPUBLIC RESPONDENT

R U L I N G

In his application dated 23rd May 2012, the applicant is contending that his constitutional rights were violated as he was not accorded a fair trial. His grounds for the application are that the occurrence book number was not indicated on the charge sheet, the charge sheet was defective, his tribe is Kikuyu yet he is a Kenyan. Further, he was charged with an alternative count of being in possession an AK 47 rifle and ammunition yet the exhibit memo done by one P.C. OLUOCH indicated that a riffle of unknown make and serial number was handed over to the firearm expert and lastly that the first report to the police was a case of attempted robbery. It is the applicant's humble request that he was denied justice by both the trial magistrate and the two judge bench that heard his appeal.

Mr. Orinda, state counsel, opposed the application and submitted that the applicant has not exhausted the appeal chain and that the applicant would like to rewind the clock.

From the application, am not able to understand what orders the applicant is seeking. The application is not made under Article 50 of the Constitution requiring for a re-trial. It is made under Article 22, 23, 25 and 165 of the Constitution. The applicant contends that his Constitutional right to a fair trial was violated. The applicant did undergo a trial before the trial magistrate in Kakamega Senior Principal Magistrate's Criminal Case number 548 of 2008. He was convicted and filed an appeal number 89 of 2009 that was dismissed by a two judge bench of the High Court.

The contentions by the applicant relating to Occurrence Book number, Serial number of riffles and defective charge sheet could have been raised during the trial. There is nothing new being raised by the applicant. I am not able to find that there was any violation of the applicant's Constitutional rights and the application is hereby dismissed.

Delivered, dated and signed at Kakamega this 31st day of January, 2013

**SAID J. CHITEMBWE
J U D G E**