



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 190 of 2010 AND

MISC. CRIMINAL APPLICATION NO. 84 OF 2012

MATAIGA MARWA APPELLANT/APPLICANT

VERSUS

REPUBLIC PROSECUTOR

(Being an appeal from original conviction and sentence of Hon. J.R. Ndururi, SRM, dated and delivered

on 27th September, 2010 in Kehancha SRM's Court Criminal Case No. 1347 of 2009)

RULING

1. The applicant herein, Mataiga Marwa was tried and convicted of the offence of robbery with violence contrary to **section 296 (2)** of the **Penal Code**. He was tried by the Senior Resident Magistrate, Mr. J.R. Ndururi, at Kehancha law courts and sentenced to suffer death as by law established.
2. The applicant's appeal to this honourable court was heard and dismissed by a 2-Judge Bench vide the judgment delivered on 31st January 2013.
3. While the appeal was pending the applicant filed the instant Miscellaneous Criminal Application NO.84 of 2012 seeking to be released on bond pending hearing and determination of his appeal. As earlier stated, the appeal was heard and determined on 31st January 2013. The appeal was dismissed for lack of merit.
4. At the hearing of the application for bond, neither the court nor the Respondent had before them a copy of the judgment in Criminal Appeal No.190 of 2010. Now that the said judgment is before the court's eyes, the court finds that it is functus officio as far as the instant application is concerned. Any application as to bond ought now to be filed and prosecuted before the Court of Appeal.
5. In the circumstances, the applicant's chamber summons dated 12th June 2012 and filed in court on 21st June 2012 be and is hereby struck out
6. Orders accordingly.

Dated and delivered at Kisii this 14th day of August, 2013

RUTH NEKOYE SITATI

JUDGE

In the presence of:

Present in person for Appellant/Applicant

Mr. Shabola for Respondent

Mr. Bibu - Court Clerk