



**Ileri v Republic (Miscellaneous Criminal Appeal 8 of 2014)  
[2023] KEHC 18029 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 18029 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
MISCELLANEOUS CRIMINAL APPEAL 8 OF 2014**

**M MUYA, J  
MARCH 16, 2023**

**BETWEEN**

**NELSON NJURURI IRERI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This application is brought under article 50 (6) (a) (b) of the Constitution which provides :-  
“ A person who is convicted of a criminal Offence may Petition the High Court for a new trial if
  - (a) the persons appeal if any, has been dismissed by the Highest Court to which the person is entitled to appeal, or the person did not appeal within which the time allowed for appeal and
  - (b) New and compelling evidence has become available”
2. The applicant in his supporting affidavit depones that he has already exhausted the appeal processes That criminal appeal no 327 of 2008 Njeri High Court was heard and determined. Court of Appeal Criminal Appeal No 13 of 2012 was also heard and determined. That there is now available new and compelling evidence.
3. This new evidence is by way of two supporting affidavits of the complainant herself and her mother. The complainant alleges to have been couched by a village elder one Samuel Gachomba and her assistant and Jane Nyashiru Ngure so as to implicate the applicant due to their interest in IDP camp where they were staying.



4. I have duly perused the judgment of the court of appeal in criminal appeal no 13 of 2012 at page 2 the last paragraph in which the court noted:- “ he submitted that there was a grudge between him and Jane Nasiku Nguni (PW1) and Samuel Gachomba Ngetha (PW2) which led to the charge against him”
5. The allegation of the existence of a grudge between the petitioner and the two witnesses was considered by the court of appeal which found that it was not proved.
6. I have also perused the judgement in High Court Criminal Appeal No 327 of 2008 at page 5 the Judge did note that in his defence the appellant did allege that there was a dispute between him and PW2. The learned Judge did find that there was no evidence linking PW2 with the complainants.
7. This issue of grudge between the Petitioner and PW1 and PW2 was extensively dealt with by the High Court and the Court of Appeal and the trial court. It does not fall under the provisions of article 50 (6) (b) of the Constitution. It has not been demonstrated of the existence and availability of new and compelling evidence.

The application has no merit and it’s disallowed.

**RULING READ, DELIVERED AND SIGNED AT NYERI IN OPEN COURT THIS 16<sup>TH</sup> DAY OF MARCH, 2023.**

**HON. JUSTICE M. MUYA**

**JUDGE**

**In the presence of**

Applicant.....for applicant

Mr. Mwangi .....for 1<sup>st</sup> Respondent

.....for 2<sup>nd</sup> Respondent

Court Assistant: Kinyua

30 days R/A.

**HON. JUSTICE M. MUYA**

**JUDGE**

