



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**CRIMINAL APPEAL NO. 215 OF 2013**

**[FORMERLY NYERI HIGH COURT CRIMINAL APPEAL NO. 32 OF 2012]**

**EDWIN KAMAU MUNJIRU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The appellant was adjudged guilty of *robbery with violence* contrary to section 296 (2) of the **Penal Code**. He was sentenced to *death*.
2. The particulars were that on 15<sup>th</sup> November 2010 he and his co-accused jointly robbed *Ephantus Njoroge Kamau* of a mobile phone *Nokia 1110*, Kshs 300, a pair of shoes and a jacket all valued at Kshs 4000 and at or immediately before the robbery they used actual violence on the complainant.
3. His first appeal to the High Court was heard by a *mixed* bench of a *High Court* Judge; and, an *Employment and Labour Relations Court* Judge. The learned judges dismissed the appeal.
4. The renewed appeal follows the directions by the Supreme Court in ***Republic v Karisa Chengo & 2 others***, Petition No. 5 of 2015 [2017] eKLR.
5. On 13<sup>th</sup> March 2019, the appellant lodged an application praying for production of the *Occurrence Book* number 20/16/11/2010 from Kahuro Police Station.
6. The application is expressed to be brought under ***Article 50 (2) (j)*** of the **Constitution**. The Article requires the prosecution to make *advance disclosure* of the evidence to be used at the trial. The appellant avers that the additional evidence will prove his *innocence*.
7. The petition is contested by the Republic. The gravamen is that the appellant never sought to rely on such evidence at his trial; and, that the application is an *afterthought*.
8. On 14<sup>th</sup> March 2019 I heard brief submissions from the appellant and the learned Prosecution Counsel.
9. The substantive appeal is pending for hearing. I am cautious *not* to comment on the merits of the appeal. But I have closely studied the record of the lower court. The applicant does *not* say that the *Occurrence Book* was *unavailable* during his *trial*. He never requested for it; and, it never formed the *core* of his defence.
10. The application is also *belated*. The trial commenced way back on 18<sup>th</sup> November 2010. There is no evidence that that the information only became available *recently*.
11. The application is undoubtedly an *afterthought*. It is without legal foundation. It is hereby *dismissed*. The main appeal shall now be set down for hearing.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A this 13<sup>th</sup> day of May 2019.**

**KANYI KIMONDO**

**JUDGE**

***Ruling read in open court in the presence of:-***

The appellant (absent)

Ms. Gichuru for the Republic instructed by the Office of the Director of Public Prosecutions.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.