

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

PETITION NO. 24 OF 2019

ROBIN OBARE MWERESA.....PETITIONER

-VRS-

THE REPUBLIC.....RESPONDENT

JUDGEMENT

By the petition filed herein on 18th July 2019 the petitioner seeks what he has defined as “**newly witness settlement after conviction**” which at the hearing he explained was a fresh trial on new and compelling evidence. He submitted that the reason he was seeking a fresh trial was because the complainant in his case did not lodge any complaint and that the stolen goods were not mentioned in the first report. He explained that he was charged with robbery with violence and upon conviction was sentenced to death.

The petition was opposed. Learned Counsel for the prosecution submitted that the grounds advanced are not grounded on the law. He urged this court to dismiss the petition.

The petitioner did not file any relevant documents save the committal warrant and an order of Majanja J substituting the sentence of death with one for imprisonment for fifteen (15) years from the date the petitioner was sentenced by the lower court. I have nevertheless called for the file from which the order was made as well as the record of the lower court. It is clear from the said records that what the petitioner is raising is not new. Firstly, he could not have been arraigned without a report from the complainant and clearly what was stolen was indicated in the charge sheet. Majanja J heard his appeal as a Judge of this court albeit sitting in Kisii High Court. He considered the evidence of identification at length and came to the conclusion that the petitioner had been positively identified. At paragraph 17 of the judgement, Majanja J observed that the complainant told the police that he could identify one of his assailants and that he did so at an identification parade.

The issue raised by the petitioner concerning the first report is not new and neither is it compelling as it ought to have been raised in the appeal and no good reason is given for not having done so. Moreover, the petitioner’s sentence of death was substituted with one for imprisonment for a term of fifteen (15) years in line with the decision of the Supreme Court in the case of **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**. If the petitioner wanted another bite at the sentence or if he felt that sentence was harsh or excessive he ought to have appealed or sought review in the Court of Appeal as provided in **Article 50 (2) (q) of the Constitution**. His petition to this court lacks merit and it is dismissed.

Signed, dated and delivered in open court this 14th day of November 2019.

E. N. MAINA

JUDGE