

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 12 OF 2018

OSMAN MOHAMED BALAGHA.....APPLICANT

VERSUS

REPUBLIC.....DEFENDANT

RULING

1. In this matter Osman Mohamed Balagha was charged in Garissa Chief Magistrate Criminal Case No. 393 of 2015. He was tried for being in possession of an article for the use instigating commission of a terrorist act contrary to section 30 of the Prevention of Terrorism Act No. 30 of 2012. He was convicted and sentenced to ten (10) years imprisonment.
2. He appealed to the High Court through Garissa Criminal Appeal No. 30 of 2017. In a judgment delivered on 4th May 2018, the appeal was dismissed and the conviction and sentence of the trial court was upheld.
3. He has now come again to this court at Garissa seeking for revision and relying on Article 50 (2) (6) of the Constitution.
4. His complaints relates to adequacy of evidence of witnesses as well as his sentence. He also filed written submissions.
5. When he appeared before this court, he relied on his written submissions and elected not to say anything orally except to state that at the trial he was not given witness statements though he requested for them.
6. The learned Principal Prosecuting Counsel Mr. Okemwa submitted that the applicant has approached this court wrongly. That he should have gone for appeal rather than come to this court.
7. Indeed, this court does not have revision powers as requested by the applicant under Article 50 of the Constitution of Kenya 2010. This court has revision powers under section 362 of the Criminal Procedure Code (Cap. 75) but only relating to proceedings conducted by the magistrate's court in order to correct errors on the face of the record.
8. This matter has already been determined in this court on appeal through a judgement delivered on 4th May 2018. This court therefore does not have jurisdiction to entertain the request of the applicant. He has come to this court but the court does not have jurisdiction to entertain his application as it cannot review its own decision. He is better advised to approach the Court of Appeal on appeal if he is not satisfied with the decision of this court in dismissing his appeal.
9. The application herein is thus dismissed.

Dated and delivered at Garissa this 13th November, 2018.

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George Dulu

JUDGE