



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**PETITION NO. 19 OF 2016**

**STEPHEN AKHONYA MUSONYE.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The petitioner herein had been convicted in Kakamega CMCCRC No. 443 of 2005 of robbery with violence and was sentenced to death. His appeals to the High Court and the Court of Appeal in Kakamega HCCRA No. 79 of 2006 and Kisumu CACRA No. 120 of 2010 were dismissed.

2. He has now come back to court asking for the court to order a retrial founded on what he calls new compelling evidence that he could not obtain with reasonable diligence as at the time of trial, which evidence he believes would have changed the course of the matter and the outcome of the proceedings.

3. I have perused through the affidavit sworn in support of the petition. He argues that he was not at the scene of the crime the subject of the proceedings. He says he was elsewhere with other persons that he has named. He has gone further to attach copies of witness statements signed by the said persons.

4. Directions were given for disposal of the petition by way of written submissions. The petitioner did file his written submissions, but the Republic did not. I have read through the submissions by the petitioner, he generally pitches for a review of his sentence.

5. When the matter came up for hearing on 2<sup>nd</sup> November 2018, the Republic, through Mr. Juma, indicated that what the petitioner was seeking was review of sentence, and the Republic had no objection to the review, only asking the court to take the aggravating circumstances of the offence into account.

6. The petition is expressed as seeking a retrial on reasons advanced in the body of the petition, but the petitioner appears to have abandoned that approach in his written submissions and veered towards a review of his sentence.

7. I have carefully perused through the records in both Kakamega CMCCRC No. 443 of 2005, Kakamega HCCRA No. 79 of 2006 and Kisumu CACRA No. 120 of 2010. I have noted that the appellant and his colleagues were armed with a dangerous weapon. No one appears to have been harmed though in the incident.

8. In view of the recent decision of the Supreme Court, I hereby review the sentence that was pronounced against the appellant by the trial court in Kakamega CMCCRC No. 443 of 2005, the death penalty, and I do hereby substitute the said sentence with a sentence of thirty (30) years imprisonment. The said sentence shall count from the 28<sup>th</sup> June 2006.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 3<sup>RD</sup> DAY OF DECEMBER., 2018**

**W. MUSYOKA**

**JUDGE**