



**REPUBLIC OF KENYA**

**INT HE HIGH COURT OF KENYA AT KISUMU**

**MISC. CRIMINAL APPL. NO.9 OF 2013**

**GAFAR ODONGO IDI.....PETITIONER**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

**GAFAR ODONGO IDI**, the petitioner herein, has brought this application under Article 50(6) of the Constitution seeking a fresh trial. The applicant was together with others not parties to the application, charged with the counts of robbery with violence contrary to Section 296(2) of the Penal Code before Chief Magistrate's Court Kisumu. They faced a fifth count of impersonating a police officer. After a full trial they were on 9th March, 2006 convicted and sentenced to death for the offence of robbery with violence and a prison term of 12 months for impersonating.

Being dissatisfied with decision of the trial court, the petitioner appealed to the High court and later filed a 2nd appeal to the Court of Appeal wherein his appeals were dismissed by he two courts. The applicant has now come to this court seeking a fresh trial basing his application on the ground that new and compelling evidence has now become available to him. The evidence that the petitioner intends to produce as new and compelling evidence is the Occurrence Book report of Obunga Police Post where the initial report was made.

A person who has been convicted and has exhausted all the appeals has the right under Article 50(6) of the Constitution to seek a fresh trial if he meets the threshold laid out therein. A perusal of the trial court record divulge that these OB reports were available to the court at the time of trial yet they did not influence the courts decision. The Supreme Court of Kenya in **TOM MARTINS, KIBISU VRS REPUBLIC [2014] eKLR** has stated that compelling evidence must be of probative value, capable of belief and which if adduced at trial could have led to a different verdict.

The evidence intended to be produced by the applicant in this case does not introduce any new information that is not already in the Court's knowledge and which would persuade it to hold that the two Superior Courts erred in their decisions.

Based on the above rendition, the application is dismissed

Dated, signed and delivered this 8th day of March, 2016.

**H. K. CHEMITEI**

**E. N. MAINA**

**J U D G E**

**J U D G E**

**In the presence of:**

.....for state

.....for petitioner