



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
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**Ochieng v Republic (Criminal Miscellaneous Application E042 of 2023)  
[2024] KEHC 11768 (KLR) (27 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11768 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL MISCELLANEOUS APPLICATION E042 OF 2023  
RE ABURILI, J  
SEPTEMBER 27, 2024**

**BETWEEN**

**DANIEL OTIENO OCHIENG ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application for review of Conviction and sentence in Siaya High Court vide Criminal Case No. 11 of 2015 delivered by Hon. Judge J. A MAKAU - J dated 16/3/2017)*

**RULING**

1. The Applicant is Daniel Otieno Ochieng vide Siaya HCCR 11/2015, he was tried, convicted and sentenced to death by J. Makau, -J. He petitioned for resentencing vide Misc. Cr. Application No E080/2021 and this court resented him to serve thirty-five (35) years imprisonment vide ruling of 21/7/2021. The term sentence was to run from the date of his arrest. The resentencing was pursuant to the *Francis Muruatetu & another v R* [2017] eKLR decision by the Supreme Court which held that murder convicts sentenced to death could be resented since the death sentence was no longer mandatory.
2. Now the convict is before the same court seeking for sentence reduction. Based on mitigation factors.
3. I have considered the application dated 16/8/2023 and find it an abuse of this court's process. The applicant/convict cannot have his cake and eat it; or have a bite at the cherry severally in the legal process.
4. The application dated 16/8/2023 is hereby found to be devoid of any substance. It is dismissed and this file closed. I so order.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 27TH DAY OF SEPTEMBER, 2024**

**R. E. ABURILI**



**JUDGE**

