



REPUBLIC OF KENYA



KENYA LAW
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**Momanyi v Republic (Constitutional Petition 1 (E003) of 2022)
[2023] KEHC 21016 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21016 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CONSTITUTIONAL PETITION 1 (E003) OF 2022**

PN GICHOHI, J

JULY 26, 2023

BETWEEN

ZIPPORAH BOSIBORI MOMANYI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The background of this Petition is that the Petitioner was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. She denied the charge before A Makhandia J. (as he then was) on June 14, 2011.
2. The case was heard by different Judges and finally concluded by Justice J. Wakiaga who convicted her on September 29, 2015 of the offence of murder and on November 25, 2015, she was sentenced to death by Justice JR Karanja.
3. Aggrieved, she filed an appeal before the Court of Appeal through the firm of Ochillo & Co Advocates and the Notice of Appeal was received by the Court of Appeal in Kisumu on December 14, 2015 as per the Notice of Appeal dated December 9, 2015.
4. On January 17, 2022, she filed this Petition for re-sentencing citing the Supreme Court decision in *Muruatetu* Case and sought that she be given a chance to mitigate at resentencing hearing terming the death sentence unconstitutional.
5. Upon being served, the Respondent through Mr Ochengo orally opposed the Petition on the ground that this Court lacks jurisdiction to resentence the accused who was convicted and sentenced by this Court differently constituted.
6. He urged the Court to dismiss the Application as it has no jurisdiction to review its own orders. He therefore urged that the Applicant pursues the Appeal in the Court of Appeal.



7. In rejoinder, the Applicant/Petitioner told the Court that she had written a letter to the Court of Appeal withdrawing the Appeal for lack of money to pay her Advocate and that she received a copy acknowledging receipt though she did not have the documents.

Determination

8. I have considered the arguments by both Parties in this Petition. The Court called for the original High Court record but it was not availed for reasons that it is still before the Court of Appeal in Kisumu. The status of the Appeal is therefore not known to this Court.
9. Be that as it may, I am not persuaded by the decisions cited by the Petitioner that this Court has jurisdiction to entertain this application for resentencing as the sentence was passed by a Court of concurrent jurisdiction.
10. In my considered view, the resentencing should be done for the matters that were handled by the lower court and where an appeal was preferred and determined by the Court of Appeal but not a resentencing in a matter as the one before this Court. This Petition is therefore dismissed for want of jurisdiction.

DATED, DELIVERED AND SIGNED AT KISII THIS 26TH DAY OF JULY 2023.

PATRICIA GICHOCHI

JUDGE

In the presence of:

The Applicant in Person

Mr. Justus Ochengo for the Respondent.

Kevin Isindu Court Assistant

