



**Isaack Nkunja Alias Professor v Republic (Criminal Petition
E010 of 2021) [2022] KEHC 11643 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11643 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL PETITION E010 OF 2021
PJO OTIENO, J
MAY 31, 2022**

BETWEEN

ISAACK NKUNJA ALIAS PROFESSOR APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. By a Notice of Motion filed in court on 12/10/2021, the applicant/petitioner sought from the court an order that the Petitioner be resentenced pursuant to the law annunciated by the Supreme Court in Supreme Court Petition No. 15 and 16 of 2015, *Francis Karioko Muruatetu & another v Republic*.
2. The foundation of the application is that his mitigation was not taken into account owing to the mandatory nature of the sentence provided by the Statute. No responses were filed by the respondent in response to the petition save for the submissions in response to the petitioners'.
3. In his submissions to the court, the petitioner reiterates the petition and its grounds that he had exhausted his remedies by appeal and has no other avenue to challenge the sentence of death which the Supreme Court held unconstitutional by the court except to seek resentencing. he then adds that the courts needs to substitute the death sentence with a determinate sentence to enable him a chance to reiterate into which sentence when so meted out should accord with section 333 (2) *Criminal Procedure Code* by taking into account the period served since arrest.
4. The petitioner thus pointed out that since imprisonment he has undergone various rehabilitation programmes and earned certificates in discipleship and one on Prisoners' Journey.
5. For the respondent, submissions were offered to the effect the sentence imposed was not only legal but also constitutional as held by the Supreme Court and that for the petitioner the aggravating circumstances far outweigh the mitigating ones and that the court took into account all the facts appurtenant to sentencing. The respondent stressed the circumstances alleged to have surrounded its



murder and asserted the same to have been brazen and to mitigate against the desire to disturb the sentence.

6. The petitioner has demonstrated having exhausted his appellate rights and beseeches this court to exercise the jurisprudence established by the Supreme Court on resentencing.
7. For one to merit consideration from resentencing, the law enunciated by the Supreme Court¹ is that he must have suffered the denial of an aspect of fair hearing. The Supreme Court in its Judgment found that failure to give to the Petitioner a chance to mitigate was an affront to the right to a fair hearing and therefore ordered that the file be remitted back to the trial court for purposes of that court imposing an appropriate sentence after taking parties submissions on the mitigating and any aggravating circumstances.
8. Here the trial court's decision on sentencing has not been availed to the court to determine whether or not there was a chance to mitigate by the accused. In addition the Judgment by the Court of Appeal reveal that there was no challenge to the sentence. To that extent there has not been exhaustion of the appellate avenue to merit this court undertaking a resentence hearing.
9. For those reasons, I find that the Petition lacks merit and dismiss the same.

DATED, SIGNED AND DELIVERED AT KAKAMEGA, ONLINE, THIS 31ST DAY OF MAY 2022.

PATRICK J O OTIENO

JUDGE

In the presence of:

Appellant in person

Ms. Mwaniki for the Respondent

Court Assistant: Mwenda

¹ Francis Karioko Muruatetu v Republic

