



REPUBLIC OF KENYA



**Awuor v Republic (Petition E003 of 2022)  
[2022] KEHC 14240 (KLR) (20 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 14240 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
PETITION E003 OF 2022  
RE ABURILI, J  
SEPTEMBER 20, 2022**

**BETWEEN**

**JOSEPH ONYANGO AWUOR ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Originating from Nyando Senior Resident Magistrate's Court Criminal Case No 736 of 2005)*

**JUDGMENT**

1. The petitioner is Joseph Onyango Awuor. This judgment determines the petitioner/convict's humble petition filed in court on February 24, 2022 seeking for resentencing in line with the Supreme Court's decision in the case of *Francis Karioko Muruatetu & Another v Republic* (2017) eKLR.
2. The petitioner in his supporting affidavit asserts that he was tried, convicted and sentenced to hang (death) for the offence of robbery with violence *vide* Nyando Senior Resident Magistrate's Court Criminal Case No 736 of 2005 on 28<sup>th</sup> July 2006 as shown by the warrant of commitment to prison annexed to his petition. The sentence of death is the mandatory sentence provided for under Section 296(2) of the *Penal Code* for the offence of robbery with violence, upon conviction.
3. The petitioner was jointly charged, tried and convicted with another, Cliff Ochieng Oduor who according to the petitioner, was resentenced *vide* Petition No 5 of 2018 to a term sentence and given the benefit of the provisions of Section 333(2) of the *Criminal Procedure Code*.
4. The petitioner's death sentence was later commuted to life imprisonment in 2009. All his appeals to the High Court and Court of Appeal were dismissed. While in prison, he submits that he has reformed and is therefore fully rehabilitated. That he is remorseful, he is now aged and trained in various life's skills and is a religious leader in the Catholic church and ready to serve as a catechist. He has also trained in home based care for HIV/AIDS survivors. He regrets committing the offence which he attributes to bad influence from bad company.



5. He submitted that the prisons authorities are ready to connect him with the Catholic church outside prison to serve as a catechist. He is also a grade 1 driver. His co-convict Cliff Ochieng petitioned for resentencing and was resented to serve 25 years in prison which term he has completed and was released.
6. Prior to being convicted, the petitioner served 15 months in remand custody. He filed another petition No E028 of 2022 seeking that the court takes into account the provisions of section 333(2) of the [Criminal Procedure Code](#) which provide for consideration of the period served in remand in sentencing by the trial court, which period should this court resentence him, should be taken into account. That application has not been determined.
7. Having considered all the above submissions in support of the petition, and taking into account the principles espoused in the [Francis Muruatetu case](#) (2017), and the age of the petitioner who has been in prison for over 18 years, I am satisfied that the petitioner deserves a chance to return back into the society to live a more meaningful life as he is now reformed and rehabilitated. I further take into account the fact that his co convict was resented and that there are no special aggravating circumstances that would derail this court from exercising the discretion sought.
8. I allow the petition for resentencing filed on February 14, 2022 and set aside and vacate the death sentence imposed on the petitioner as commuted to life imprisonment.
9. In its place, I hereby resentence the petitioner Joseph Onyango Awuor to the prison term already served, on both counts, taking into account the period already spent in remand custody prior to his conviction and sentencing.
10. Therefore, unless otherwise lawfully held, Joseph Onyango Awuor shall be set at liberty forthwith.
11. This ruling and order shall be typed forthwith and a signal send to prisons to facilitate the process of releasing the petitioner.
12. It is so order.
13. File closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2022**

**R. E. ABURILI**

**JUDGE**

