



REPUBLIC OF KENYA



KENYA LAW
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**Okuta v Republic (Criminal Petition E049 of 2021)
[2022] KEHC 14590 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14590 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL PETITION E049 OF 2021
RE ABURILI, J
OCTOBER 26, 2022**

BETWEEN

JACK ODHIAMBO OKUTA PETITIONER

AND

REPUBLIC RESPONDENT

*(Petition for Resentencing in Kisumu HCCR No. 21 of 2010 in
a judgment delivered by Hon. D. S. Majanja on 17/5/2017)*

RULING

1. The petitioner Jack Odhiambo Okuta was convicted of the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* by DS Majanja J on 17/5/2017. He was sentenced to death (from his warrant of commitment dated 25/5/2017 annexed to this petition. He petitions this court for resentencing. He claims that he did not appeal to the Court of Appeal but when the matter came up on 17/2/2022, Ms Odumba Prosecution counsel informed the court that the Petitioner had a pending appeal before the Court of Appeal. This is evidenced by the order from the Court of Appeal dated 5/7/2022 showing that he had an appeal No 247/2018 which was withdrawn. The petitioner was then granted 60 days to file the order from the Court of Appeal to confirm the withdrawal of the said appeal from the Court of Appeal.
2. The matter has been mentioned on all those occasions from October 7, 2021 to 25/4/2022 for further directions.
3. I have perused the petition for resentencing and the Judgment by DS Majanja J in HCR 21/2010. Other than the Petitioner claiming that the death sentence was unconstitutional, and citing the Francis Muruatetu decision which was rendered after he was sentenced, he does not provide any mitigating factors or circumstances that would persuade this court to tamper with the mandatory but lawful death sentence impose on him, considering the vicious manner in which he scooped life out of the



deceased Keith David Owuor and in his defence vehemently denied beating the deceased, claiming that the deceased was attacked by unknown assailants. After seriously assaulting the deceased, the petitioner covered his tracks by rushing to the police to report that the deceased had stolen his phone and money. The petitioner lived with the deceased in the same house. Why did he viciously and painfully kill the deceased?

4. The deceased suffered intracranial haemorrhage secondary to blunt head trauma.
5. The petitioner did to the deceased what he himself does not expect anyone to do to him.
6. There are no mitigating circumstances to persuade this court to resentence the petitioner herein who has not even filed any mitigations or shown remorse.
7. Citing *Francis Muruatetu* case is not sufficient to attract the attention of this court because the Supreme Court did not outlaw death sentence which remains lawful. The Supreme Court in the *Francis Muruatetu* case held that the mandatory nature of death sentence was unconstitutional to the extent that it deprived the trial court of the discretion in sentencing, having regard to the circumstances of each case and mitigations by a convict, who was equally deprived of the opportunity to mitigate as the court's hands were tied to the mandatory sentence. the Supreme Court further held that in appropriate cases, noting stops the trial court from imposing death sentence as s provided by law.
8. The circumstances of this case demanding that the petitioner be left to the mercy of the power of mercy and or the presidential clemency in commutation of sentences.
9. I decline to resentence the petitioner to a term sentence for want of merit in the petition filed on 10/9/2021 which is hereby dismissed.
10. This file is closed. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 26TH DAY OF OCTOBER, 2022

R.E. ABURILI

JUDGE

