



**Ouma v Republic (Criminal Petition E045 of 2021)
[2022] KEHC 14586 (KLR) (26 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14586 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL PETITION E045 OF 2021
RE ABURILI, J
OCTOBER 26, 2022**

BETWEEN

MICHAEL OUMA PETITIONER

AND

REPUBLIC RESPONDENT

(Petition for Resentencing in Kisumu HCCRC No. 33 of 2013)

JUDGMENT

1. The petitioner herein is the convict in Kisumu HC CR 33 of 2013 wherein he was convicted of the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* after a full trial and he was sentenced to death on November 3, 2016 by Hon Lady Justice E N Maina.
2. In her sentencing remarks, the learned judge was clear that despite the mitigation for leniency by the accused person, the offence of murder carried a mandatory death penalty and the Supreme Court was yet to pronounce itself on the constitutionality or otherwise of the death penalty.
3. Aggrieved by the conviction and sentence, the petitioner herein filed an appeal to the Court of Appeal *vide* CRA No 131 of 2020 as per the records herein. However, the deputy registrar, Court of Appeal wrote to this court intimating that only Peterlis Kungu, the co-convict of the petitioner herein filed the appeal to the Court of Appeal. The petitioner was then directed to file his submissions within 14 days from the date of collection of proceedings from the court by officers from Kisumu Maximum Prison. This was on March 30, 2022. To date, there are no submissions filed.
4. I will therefore rely on the petition filed by petitioner/convict, as the supporting affidavit is not sworn or commissioned at all. The petition was filed on July 28, 2021.



5. The petitioner seeks for resentencing claiming that the death sentence imposed on him was unconstitutional as was held by the Supreme Court in *Francis Muruatetu & Another v Republic [2017] eKLR* which decision was pronounced after the conviction and sentence passed on the petitioner.
6. That since his arrest on July 19, 2013, the petitioner has been in custody for 8 years.
7. I have considered the petition by the convict herein and perused the criminal case file and the evidence therein. There is absolutely no reason or justification why the petitioner and his co-convict viciously attacked the deceased and butchered him to death. The fact that the petitioner did not appeal against his conviction and sentence is a clear manifestation of his guilt which was proved beyond reasonable doubt.
8. I have examined the mitigation given by the petitioner who was a first offender and that he pleaded for leniency. In his petition for resentencing, he has not stated any mitigating circumstances that led him to butcher the deceased as shown by the photographs produced as exhibits.
9. The petitioner deserved the sentence imposed on him. An innocent life was lost in a very brutal manner yet the petitioner has not disclosed what led him to murder the deceased in cold blood.
10. The Supreme Court did not outlaw death sentence. The trial court enjoys the discretion in sentencing having regard to the mitigation and circumstances of each case. I find no mitigating circumstances that would persuade me to interfere with sentence imposed on the petitioner by the trial Judge. I find this petition to be devoid of any merit. I dismiss it.
11. I so order.
12. File closed.

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

R E ABURILI

JUDGE

