



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oyieyo v Republic (Criminal Petition E036 of 2021)  
[2022] KEHC 14443 (KLR) (26 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14443 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL PETITION E036 OF 2021  
RE ABURILI, J  
OCTOBER 26, 2022**

**BETWEEN**

**SAMSON OGUTU OYIEYO ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Petition for Resentencing in Homabay SRM Cr. Case No. 717 of 2005 in a Judgment rendered on 17/2/2006 by Hon. B. Ochieng, Senior Resident Magistrate and in Kisumu HCCRA No. 98 of 2006 by Hon. D. Musinga & J.R. Karanja JJ on 31/7/2008)*

**JUDGMENT**

1. The petitioner is Samson Ogutu Oyieyo. He was convicted and sentenced to death for the offence of robbery with violence *vide* Homabay SRM Cr Case No 717 of 2005 in a judgment rendered on February 17, 2006 by Hon B Ochieng, SRM.
2. He appealed *vide* Kisumu HCCRA 98/2006 which appeal was heard and dismissed by D Musinga and J R Karanja JJ on July 31, 2008. He claims that his appeal to the Court of Appeal was dismissed but there is no evidence of such appeal which he does not cite.
3. This matter has been before Kisumu High Court from June 3, 2021 to date with the petitioner seeking more time to avail proceedings each time the matter was before F A Ochieng J. The High Court appeal judgment was finally availed on November 23, 2021.
4. The petitioner also filed certificate of training on home based care givers and another certificate in stress management and rehabilitative training. He claims that death sentence is unconstitutional, relying on *Francis Muruatetu & Another V Republic* [2017]eKLR. He filed submissions on November 23, 2021 pleading that he was aged 17 years and is now 41 years because he has been in prison for 16 years (total is 33 years not 41 years) and that his dreams have been shattered.



5. That he has reformed and he was a first offender hence he can be reintegrated and rehabilitated. That he is remorseful and prays for resentencing and application of section 333(2) of the [Criminal Procedure Code](#). He pleads for a second chance as he will teach others against crime and he has been disciplined in prison.
6. I have considered the submissions by the petitioner in mitigation and the circumstances under which the offence of robbery with violence was committed.
7. I observe that the victim was a university student and that the petitioner and his accomplices were armed with a metal bar and a knife. They robbed the student of Kshs 13,000/=, a note book, jacket and cap. A phone was also stolen.
8. The robbery took place at a night club where the victim had gone to join his brother for dance and drinks.
9. The petitioner in his defence said he was a welder and knew nothing about the offence.
10. Although he was a first offender, the offender and his accomplices were dangerous criminals.
11. However, for the period spent in custody, this court trusts that he has learnt his life lessons. He claims that he was 17 years which is doubtful as no such issue of the petitioner's age was raised during the proceedings in the trial court and on appeal. I find that claim of age to be an afterthought and a white lie.
12. Applying the principles espoused in [Francis Muruatetu V Republic](#) case; and considering the mitigations by the petitioner herein, i exercise discretion and set aside the death sentence and resentence him to serve thirty five (35) years imprisonment to be calculated from the date of his arrest as he was not on bond during the trial in the lower court.
13. I so order.
14. This file is hereby closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 26<sup>TH</sup> DAY OF OCTOBER, 2022**

**R.E. ABURILI**

**JUDGE**

