



**Ouko v Republic (Criminal Petition E029 of 2021)
[2022] KEHC 14161 (KLR) (21 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14161 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL PETITION E029 OF 2021
RE ABURILI, J
OCTOBER 21, 2022**

BETWEEN

HENRY OBISA OUKO PETITIONER

AND

REPUBLIC RESPONDENT

*(Being a Petition for resentencing in Kisumu HCCR Case
No. 18 of 2017 by Hon. T.W. Cherere J on 26/7/2018)*

JUDGMENT

1. This petition is for resentencing. The petitioner is Henry Obisa Aoko. He was convicted of the offence of murder contrary to section 203 as read with section 204 of the Penal Code by Hon TW Cherere J vide her judgement delivered on July 26, 2018 in Kisumu HCCR Case No 18 of 2017.
2. From the judgment which he has annexed to the petition, he claims that he was sentenced to death and wishes this court to review the mandatory death sentence imposed on him because it is unconstitutional and violated his rights under article 27(1) (2) of the Constitution and is degrading.
3. The petition was filed on April 26, 2021 upon which the court requested for information from the Court of Appeal if his appeal was still pending.
4. From the letter dated March 16, 2022, the petitioner has a pending appeal before the Court of Appeal vide CRA 134/2019.
5. That being the case, as the petitioner has not prosecuted his appeal, this court cannot review sentence imposed on him which resentence might conflict with the decision of the Court of Appeal.
6. On June 21, 2022 the petitioner was advised by the then presiding judge Hon FA Ochieng J (as he then was) to withdraw his appeal if he wanted this court to consider resentencing him but to date, no such order of withdrawal of the appeal has been filed.



7. For the above reasons, I find this petition to be devoid of merit and it is premature since the petitioner elected to exhaust the avenues of appeal where the Court of Appeal has jurisdiction to determine whether the death sentence imposed on him is lawful or is unconstitutional.
8. Accordingly, the petition herein is hereby dismissed.
9. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 21ST DAY OF OCTOBER, 2022

R.E. ABURILI

JUDGE

