



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CRIMINAL PETITION NO.14 OF 2018**

**WALTER ONYANGO ODINO.....APPELLANT**

**- V E R S U S -**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. The Petitioner herein **WALTER ONYANGO ODINO** filed this Petition seeking re-hearing of the sentence impose upon him Kericho SPM Criminal Case No.2000 of 2007 where the Petitioner was sentence to death.
2. The Petitioner has exhausted all appeals and he is now seeking re-hearing of the sentence.
3. The Petitioner filed an Affidavit in Support of the Petition which was filed in Court on 22/10/2018 in which he deposed that he was not accorded a fair trial from the trial to the Court of appeal thus contravening Article 50 (2)(g) of the Constitution of Kenya.
4. The Petitioner relied on the case of **FRANCIS KARIOKO MURUATETU and ANOTHER, (SUPREME COURT PETITION NO.15 of 2015)** where it was held that the death penalty is unconstitutional.
5. Upon considered the Judgment of the Court of Appeal delivered on 4/10/2019, I find that the Petitioner raised the same issues he is raising in this petition and the Court of Appeal rendered itself on the said issues.
6. The Court of Appeal stated in its judgment in part as follows:

***“A gang in which the Appellant was positively identified to be a member and an active participant committed the offence in question, some in police uniform armed with firearms. Bett and Mokaya, two innocent people who did not resist the robbery and who from the evidence on record desperately pleaded for their lives were killed in cold blood, shot in the head after their hands were tied behind their backs. PW2 was raped and shot in the head, clearly with the intention of killing her, but miraculously she survived. When offered the opportunity to mitigate, the Appellant did not even express any remorse”***

7. I find that the Court of Appeal in the said Judgment declined to refer this matter back to the High Court for reconsideration of the sentence and clearly stated as follows: -

***“In these particular circumstances, we are not persuaded that the two courts below imposed an undeservedly harsh severe sentence or otherwise erred in the exercise of their discretion in sentencing. There is nothing to refer to the High Court for reconsideration”.***

8. It is on that basis that I disallow this Petition. This court cannot sit on appeal on an issue the Court of Appeal has deliberated on and made a finding that there is nothing to reconsider.
9. The Petition filed herein by the Petitioner is accordingly dismissed.

**Dated, Delivered and Signed at Kericho this 30<sup>th</sup> day of July, 2020.**

**A. N. ONGERI**

**JUDGE**