

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CRIMINAL PETITION NO.54 OF 2018

(CORAM: T.W.CHERERE J.)

BETWEEN

SAMSON OCHIENG OGAJA.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. The matter before the court is a petition for resentencing necessitated by the Supreme Court decision in **Francis Karioko Muruateru & Another v Republic SCK Pet. No. 15 OF 2015 [2017] eKLR** declaring the mandatory death sentence unconstitutional.
2. The petition was filed without any supporting documents. In my effort to get the appeal files, I established from the High Court Registry that the petitioner filed **HCCRA NO. 345 OF 2001** which was heard and dismissed. I also established from and Court of Appeal Registry that the petitioner subsequently filed **CA CRIMINAL APPEAL 67 OF 2007** but it could not be heard because **HCCRA NO. 345 OF 2001** file could not be traced. Consequently, the High Court in its duty to ensure that the petitioner's appeal is heard opened another appeal file **Samson Ochieng Ogeja & another v Republic High Court Criminal Appeal 47 of 2017 [2017] eKLR**. The appeal was heard and dismissed on 27th November, 2017 thus affirming the death sentence.
3. The petitioner has not filed an appeal to the Court of Appeal. Having not exhausted his right of appeal, I find that this petition for resentencing is premature and it is disallowed.

DATED AND SIGNED AT KISUMU THIS 27th DAY OF September, 2018

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Felix

Appellant - Present in person

For the State - Mr. Barasa