



**Otieno v Republic (Criminal Miscellaneous Application
E061 of 2024) [2025] KEHC 520 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 520 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E061 OF 2024**

**DK KEMEL, J
JANUARY 17, 2025**

BETWEEN

MARTIN ONDURU OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Martin Onduru Otieno seeks for an order that his life sentence be reviewed in line with the Supreme Court's decision in Francis Karioko Muruatetu & 2 others VAS. R (2017) eKLR, and that the period spent in custody during the trial be considered.
2. The Applicant's gravamen is inter alia; that he was convicted and sentenced to death vide Bondo Chief Magistrate's Court Cr. No. 69 of 2008; that he lodged an appeal at Kisumu High Court vide HCRA No. 149 of 2008 which was dismissed; that he lodged a second appeal at the Court of Appeal Kisumu vide CRA NO. 310 of 2009 but which was dismissed; that the mandatory death penalty is unconstitutional that the Applicant should be given an opportunity for a re-sentencing hearing; that he had been in prison for 16 years.
3. I have given due consideration to the application. It is not in dispute that the Applicant has exhausted out his appeals. It is also not in dispute that the Applicant herein filed a criminal petition vide Siaya Criminal Petition No. 2 of 2022 which was dismissed by Aburili J, on 28/2/2022. It is not in dispute that he Applicant has neither moved this court for review of orders made on 28/2/2022 nor lodged an appeal to the Court of Appeal. As the Applicant has done neither of the above, I find the present application is bereft of any merit. It is instructive that the Applicant's sentence of death has since been commuted to one of life imprisonment and hence he has already had his sentence reviewed accordingly.
4. In the result, it is my finding that the application filed on 22/6/2024 lacks merit. The same is dismissed.

DATED AND DELIVERED AT SIAYA THIS 17TH DAY OF JANUARY 2025.



D. KEMEI
JUDGE

