



**Odhiambo v Republic (Petition E014 of 2022)
[2023] KEHC 2882 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2882 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PETITION E014 OF 2022
RE ABURILI, J
MARCH 24, 2023**

BETWEEN

PETER ODHIAMBO ODHIAMBO APPLICANT

AND

REPUBLIC RESPONDENT

*(From original conviction and sentence in Criminal
Case No 8 of 1992 in the High Court at Kisumu)*

RULING

1. This petition for resentencing was filed on July 14, 2022 and to date, the file has been mentioned from time to time with no hearing on site.
2. The Petitioner is a convict for the offence of murder. He was sentenced to suffer death *vide* Kisumu HCCR No 8 of 1992 by Mango J (as he then was) on March 9, 1993.
3. He has been in prison for over 30 years as the law as it was then did not allow release of capital offenders on bond pending trial.
4. The death sentence was however commuted to life imprisonment by his Excellency the President after the appeal by the convict to the Court of Appeal was dismissed.
5. He is before this court seeking for resentencing
6. I have considered the Petition for resentencing. The convict petition has invoked the decision by the Supreme Court in *Francis Muruatetu & Another vs Republic* (2017) eKLR which declared as unconstitutional the mandatory nature of death sentence as it deprived the accused convict the right to mitigate and the discretion of the trial court in sentencing.



7. Albeit death sentence is not in itself unconstitutional as it can be imposed as by law provided, the trial court must give a convicted person the opportunity to mitigate. As matter were then, the trial court had no discretion in sentencing murder convicts.
8. It is the Supreme court in the above case that opened the way for murder convicts to get lesser sentences and allowed for resentencing.
9. When the Petitioner herein Peter Odhiambo Odhiambo appeared in court on November 2, 2022, corporal Kitui from Kisumu Maximum Prison informed the court that the Petitioner was sentenced the death and his death sentence was commuted to life imprisonment in 2009. That he had been in prison since 1992 and suffered depression hence he had difficulty in communicating with the court.
10. Despite the Judge ordering for the trial court file to be availed, it is now four (4) months without compliance yet the court that convicted the Petitioner is Kisumu High Court.
11. The court cannot and should never be seen to be an oppressor or and in delayed justice. The Petitioner has served thirty one (31) years in prison.
12. In my view, he has paid for his sins. The purposes and objects of sentencing have in my view, been achieved by the long incarceration. I find no reason why the petitioner should remain in prison.
13. I hereby resentence Peter Odhiambo Odhiambo to the period already spent in prison which is thirty-one (31) years. Therefore, unless otherwise lawfully held, the convict Peter Odhiambo Odhiambo in Kisumu HCCRC No 8 of 1992 is hereby set at liberty forthwith and the prisons authorities shall ensure that he is safely delivered to his family members for reintegration.
14. This Ruling and signal to be typed and issued forthwith.
15. This file is closed.
16. I so order.

Dated, Signed and Delivered at Kisumu this 24th Day of March, 2023

R. E. ABURILI

JUDGE

