



**Marenya v Republic (Criminal Petition E002 of 2023)
[2023] KEHC 3147 (KLR) (12 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL PETITION E002 OF 2023
RE ABURILI, J
APRIL 12, 2023**

BETWEEN

KENNEDY NGESA MARENYA APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner herein is Kennedy Ngesa Marenya. Vide his Petition filed on February 9, 2023 supported by his sworn affidavit and written submissions, he claims that he was convicted and sentenced to death for the offence of murder vide Kisumu HCR Case No 22 of 2011 by DS Majanja J and that he appealed to the Court of Appeal vide Court of Appeal Criminal Appeal No 97 of 2018. He was cited the sentencing remarks by Majanja J wherein the learned Judge after hearing mitigation of the Convict, he stated that he had no option in imposing the only sentence upon conviction of murder which is death.
2. This was on November 17, 2017 before the Supreme Court pronounced itself on the unconstitutionality of the mandatory nature of death sentence.
3. I however note that the appeal pending before the Court of Appeal has not been heard and determined and the Petitioner's allegation that he wrote a notice of withdrawal is not backed by any such notice of withdrawal of appeal.
4. I find this Petition to be premature and untenable as this court cannot consider sentence in a matter which is pending before a superior court.
5. The petition is hereby dismissed although the Convict can file a fresh petition after conclusion of the Court of Appeal CRA No 97 of 2018.
6. This file is hereby closed.
7. I so order.



Dated, Signed and Delivered at Kisumu this 12th Day of April, 2023

R E ABURILI

JUDGE

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