



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okwemba v Republic (Criminal Petition E016 of 2022)  
[2023] KEHC 4008 (KLR) (3 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 4008 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL PETITION E016 OF 2022**

**RE ABURILI, J**

**MAY 3, 2023**

**BETWEEN**

**PETER MUSUMBA OKWEMBA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Petition herein was filed on August 2, 2022 by Peter Musumba Okwemba by way of Chamber Summons and a Petition. It seeks for sentence rehearing and the application of Section 333(2) of the [Criminal Procedure Code](#).
2. The Applicant/Petitioner filed two separate pleadings which I shall consider as one. He pleads that he was charged, tried and sentenced to death vide Maseno Senior Principal Magistrate Criminal Case No 807 of 2013 for the 2 Counts of Robbery with violence contrary to Section 296(2) of the [Penal Code](#).
3. That he appealed vide HCCRA Nos 55, 56 and 57 of 2015 which appeal was dismissed. He does not indicate whether he appealed to the Court of Appeal but prays for lenient sentence because he has reformed and that the court should take into account the period of nine (9) years that he spent in custody pending trial and sentencing from August 6, 2013.
4. That he was 35 years old then and he is now 45 years old hence his youth has been destroyed. He regrets committing the offence. He has filed several testimonials including a recommendation letter from Kisumu Maximum Prison dated February 3, 2021 to the effect that he has trained in various life skills and has had exemplary discipline and been promoted to special trustee stage and currently he is the Prisoner in-charge of Social Welfare office. The Prisons authorities highly recommend the Petitioner for reintegration into the society. He has acquired various life skills while in prison.
5. In his mitigation, he submits that he has a family of nine, that his children dropped out of school due to financial hardship, that no life was lost during the robbery, the value of the property stolen was little



- and that he has severally tried to reach out to the complainant's family to reconcile because he was enticed by peers to commit the offence and that he regrets committing the offence.
6. That the period that he has served in prison is sufficient for him to have a chance to take care of his family who were hit hard by Covid-19.
  7. I have considered the Petition and Chamber Summons and the supporting affidavits and testimonials, as well as the submissions by the Convict/Petitioner herein.
  8. From the charge sheet and evidence in support thereof, it is evidently clear that the complainant had just been operated on after delivering a baby who was only 3 months old. The robbers raped the complainant. They had no mercy. They indignified the woman. Every woman brings forth life and even if they are not one's mother, the woman signifies motherhood. The robbers were merciless. The Appellant herein held the complainant's leg as she was being raped by Andrew. The Appellant owes an overt profound apology to the complainant. He cannot just say that he has reformed. It is not enough to say that he is now of good character. He must remain away from the society which he defiled. Which woman does he want to go and live with? How would he feel if the raped complainant was his own wife, daughter or sister or mother, aunt, niece or granddaughter?
  9. I am not persuaded that the Petitioner herein deserves reconsideration of his sentence in view of the horrific circumstances under which the offence of robbery with violence and the raping of the complainant PW1 took place. He has studied the Bible while in Prison and that is good enough. Let him remain in prison preaching to his fellow inmates and preparing his and their way for a better life ahead.
  10. I am aware of the burden that prisoners are to the entire economy. But protection of life, limb and property is more important. The *Muruatetu* principles are clear that death sentence is not unconstitutional and in appropriate circumstances as in this case, the court should not shy away from imposing death sentence.
  11. The Petitioner has not stated whether he filed an appeal to the Court of Appeal and if not, why. Death sentence is lawful under Article 26(3) of the *Constitution*.
  12. For all the above reasons, I find that this Petition is devoid of any merit. It is hereby dismissed.
  13. File closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 3<sup>RD</sup> DAY OF MAY, 2023**

**R. E. ABURILI**

**JUDGE**

