



**Odero v Republic (Miscellaneous Criminal Petition E014 of 2023)  
[2023] KEHC 23598 (KLR) (25 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 23598 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL PETITION E014 OF 2023**

**MS SHARIFF, J**

**JULY 25, 2023**

**BETWEEN**

**NICHOLAS OTIENO ODERO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**A. Introduction**

1. The Petitioner herein Nicholas Otieno Odero was charged and convicted of the offence of robbery with violence contrary to Section 296 (2) of the *penal code* in Kisumu Chief Magistrate's Court Criminal Case No 743 of 2004. On January 19, 2005 he was sentenced to death.
2. The Applicant subsequently lodged an appeal in Kisumu High Court Criminal Appeal No 12 of 2005: Nicholas Otieno Odero vs R which appeal was heard and dismissed.
3. The Petitioner has now petitioned this court for resentencing in light of the Supreme Court decision in *Francis Kariuki Muruatetu & Another vs Republic & 5 others (2017) eKLR*.

**B. Analysis and determination:**

4. It is instructive to note that at all material times leading to the conviction of the Petitioner and the dismissal of his appeal, the statutory prescribed sentence upon conviction for the offence of robbery with violence was death sentence.
5. Presently, with the advent of the locus classicus Supreme Court judgment in the case of Francis Kariuki Muruatetu & Another vs Republic & 5 others (2017) eKLR which declared statutory mandatory sentences unconstitutional, the Petitioner herein has been given a life line.



6. This court has had the benefit of considering the precedent in Kisumu High Court Petition No 06 of 2019: *Stephen Ochieng Rasta vs Republic (2019) eKLR*, wherein Justice Cherere allowed a petition by the Petitioner's co-accused and resented him to 15 years imprisonment on May 30, 2019. I am persuaded by that decision and I do hereby find that the Petitioner's right to life and his human dignity as enshrined under articles 26 and 28 of the *Constitution* of Kenya 2010 ought to be upheld.
7. I would not belabour restating the judgment in Muruatetu 1 as the same is binding upon this court.

**C. Conclusion:**

8. On the balance I do hereby find that the petition herein is well merited and for purposes of advancement of consistence and fairness in sentencing within our criminal jurisprudence, I do hereby allow this petition while taking into account the fact that unlike his co-accused, the Petitioner herein has not adduced any evidence of self improvement either academically or through acquisition of any skill or trade during this period of incarceration.
9. This court has duly taken into account the period 18 years and 6 months already spent in custody pursuant to the provisions of Section 333 (2) of the *Criminal Procedure Code* and I therefore commute the Petitioner's sentence to a definite incarceration term of 13 years, which sentence shall be subject to the commutation in the event the Petitioner meets the requisite criteria thereof. The sentence to be computed from the July 25, 2023.
10. This file is marked as closed.

**DELIVERED, SIGNED AND DATED AT KISUMU THIS 25<sup>TH</sup> DAY OF JULY, 2023.**

**MWANAISHA S. SHARIFF**

**JUDGE**

