



**Buluma v Republic (Criminal Petition 5A of 2022)
[2023] KEHC 23408 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL PETITION 5A OF 2022
WM MUSYOKA, J
OCTOBER 13, 2023**

BETWEEN

PATRICK MAKOKHA BULUMA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Motion and petition, filed herein on November 25, 2021, seeks re-sentencing. The petitioner had been convicted in Busia CMCCRC No 1231 of 2003, on 1 count of robbery with violence, and was given the mandatory death penalty and another count of rape, and was sentenced to 15 years imprisonment, which was stayed. The sentences were imposed on November 24, 2008. His appeal, in Busia HCCRA No. 11 of 2009, was not successful. The heading of the application and the Motion indicates that the petitioner filed an appeal at the Court of Appeal, being Kisumu CACRA No 291 of 2012, but he has not disclosed what became of the appeal. I have not seen a copy of the judgment from that appeal, or a notice of withdrawal of the appeal. As there is no record of what happened at the Court of Appeal, and the petitioner has not made any averments on it in his affidavit, I will not proceed to consider the review application.
2. I also notice that the death sentence is no longer hanging over the head of the petitioner, as he avers that it was commuted to life imprisonment by the President of the Republic, on August 3, 2009. I will only entertain this petition on account of the decision of the Court of Appeal, in *Julius Kitsao Manyeso v Republic* Malindi CACRA No 12 of 2021 (Nyamweya, Lesiit & Odunga, JJA), that the sentence of life imprisonment is unconstitutional.
3. Let records from the Court of Appeal in Kisumu CACRA No 291 of 2012 be made available, or otherwise let the petitioner update this court on the status of that appeal. Otherwise, for now, the petition is postponed. I shall allocate a date for mention of the matter for further directions.



**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 13TH DAY
OF OCTOBER 2023**

WM MUSYOKA

JUDGE

