



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**MISC. CRIMINAL APPLICATION NO. E059 OF 2021**

**CORAM: R.E. ABURILI, J**

**PAUL OMONDI ODIPO.....1<sup>ST</sup> APPLICANT**

**DAVID OMONDI ACHAYO.....2<sup>ND</sup> APPLICANT**

**CHARLES ODUOR AKINYI OGAJA.....3<sup>RD</sup> APPLICANT**

**JOSEPH ONYANGO WERE ODUMA.....4<sup>TH</sup> APPLICANT**

**HESBON OTIENO OKOTH.....5<sup>TH</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Being an Application originating from Kisumu High Court Cr. 12/2006 AND vide Resentencing Petition No. 47/2019 at Kisumu)***

**RULING**

1. The 5 Applicants/convicts filed the Notice of Motion on 25/3/2021 seeking that this court considers and gives them the least severe sentence as stipulated in Article 50(2)(p) of the Constitution by reviewing the 20 years imprisonment which was reimposed on them after an appeal, to commence in 2006 the date of arrest.

2. I note that the applicants were sentenced to death for Murder vide Kisumu HC Cr. 12/2006 and vide a resentencing Petition No. 47/2019 at Kisumu High Court, they were resented to serve 20 years imprisonment. The convicts having benefited from the least severe sentence of death to only 20 years imprisonment, and as the latter sentence was not the original sentence, I find no merit in this application.

3. In addition they had the opportunity to seek for the least severe sentence during resentencing. The resentence imposed was too lenient and less severe. They cannot bite the cherry twice. Furthermore, they have bypassed Kisumu High Court to this court which is mischievous and a forum shopping exercise.

4. I decline to grant the orders sought and dismiss the application in its entirety and direct that this ruling be typed and send to the Deputy Registrar Kisumu High Court to be placed in **Murder Cr. 12/2006 and Constitutional Criminal Petition No. 47/2019** (resentencing) to avoid abuse of court process.

5. The application is dismissed.

6. File closed.

7. Orders accordingly.

**Dated, signed and delivered at Siaya, this 1<sup>st</sup> Day of April 2021**

**R.E. ABURILI**

**JUDGE**