

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL PETITION NO. 40 OF 2018

(From original conviction and sentence in Criminal Case No. HCCR 18 of 2003)

JAMES ONZANO OPUCHI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant James Onzano Opuchi, was convicted of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. He was sentenced to death. The sentence of death was later commuted to life imprisonment. The Applicant was aggrieved by his conviction and sentence. He filed an appeal in the Court of Appeal. Meanwhile the Applicant has approached this court with an application seeking to be resentenced. There is no evidence placed before the record of this court that the Applicant has withdrawn or abandoned his appeal to the Court of Appeal.

The resentencing option is only available to a convict who has exhausted all the legally available avenues of appeal. A resentencing is not an alternative to an appeal. A resentencing is not a short-cut to the appeal process. An Applicant applying to the court for resentencing pursuant to the Supreme Court decision of **Francis Karioko Muruatetu & Others – vs- Republic [2017] eKLR** is assumed to have either admitted the offence or that the Appellate process has ended it such that he can no longer challenge his conviction. Where it is established that there is a pending appeal, this court has no jurisdiction to hear an application for resentencing because to do so, will be usurping the jurisdiction of the Court of Appeal.

In the premises therefore, notwithstanding the Applicant's mitigation, this court cannot consider the application for resentencing because it lacks jurisdiction. The Application herein was filed during the pendency of an appeal to the Court of Appeal. The said lacks merit and is hereby dismissed.

DATED AT KITALE THIS 10TH DAY OF MAY, 2021

L.KIMARU

JUDGE