

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

MISC. CRIMINAL APPLICATION NO. E098 OF 2021

CORAM: HON. R.E. ABURILI J

MESHACK ODUOL ALARA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Sentence Review against sentence in Siaya HCCRC No. 15 of 2016 by Hon. Justice J.A. Makau, J on 2.2.2018)

RULING

1. The applicant herein Meshack Oduol Alara is a convict for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code in Siaya HCR 15/2016. He was sentenced to suffer death. He has not appealed against the conviction and sentence and now seeks for resentencing on account that he has reformed after being rehabilitated and that he is entitled to the least severe sentence as contemplated in Article 50(2)(p), 24(1)(2) of the Constitution as read with Section 26(2) of the Penal Code and 333(2) of the Criminal Procedure Code.

2. The court that sentenced the applicant had jurisdiction to do so and the guidelines by the Supreme Court in the recent Francis Muruatetu case are clear. The applicant/convict had the opportunity to appeal his conviction and sentence. He sat on his rights from 2/2/2018 when he was sentenced by James Makau J. The death sentence is neither unlawful nor unconstitutional as it is authorized by Section 204 of the Penal Code and Article 26(3) of the Constitution which clarifies that position.

3. The convict was given an opportunity to mitigate which he did through his counsel Mr. Ochieng and the trial court (James Makau J) did consider the mitigations and circumstances under which the offence of murder was committed before sentencing the convict to death.

4. I have no reason to interfere with that discretion through resentencing. Accordingly, I hereby decline the application and dismiss it.

5. File closed.

6. Orders accordingly.

Dated, signed and Delivered at Siaya this 20th Day of September 2021

R.E. ABURILI

JUDGE