



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CONSTITUTIONAL PETITION NO. E006 OF 2021**

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

**NICHOLAS OMONDI NDAR.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Application arising from Kisumu High Court Criminal Appeal No. 97/2006 AND**

**Originating from Siaya Principal Magistrate's Court in Cr. Case No. 1257 of 2005)**

**RULING**

1. The applicant in his application filed on 26/8/2021 Nicholas Omondi Ndar claims that he was sentenced to death which is unconstitutional, upon conviction for the offence of Robbery with violence.
2. He appealed to the High court which appeal No. 97/2016 at Kisumu was dismissed. He does not indicate whether he filed any appeal to the Court of Appeal.
3. From his affidavit in support, the death sentence was commuted to life imprisonment by the H.E. the President. That being the case, the applicant's application is unfounded as he is serving life imprisonment which is least severe as espoused in Article 50(2) (p) of the Constitution. Furthermore, Death sentence is not unconstitutional. The Francis Muruatetu case did not outlaw death sentence.
4. Article 26(3) of the Constitution is clear on deprivation of life by authority of the law or the Constitution.
5. The applicant did not file any proceedings or judgment to support his assertion or for this court to establish whether he was denied the opportunity to mitigate before he was sentenced and the circumstances under which the heinous offence was committed.
6. Accordingly, I find this application bereft of merit. The same is hereby dismissed.
7. File closed.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2021**

**R.E. ABURILI**

**JUDGE**