

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CONSTITUTIONAL CRIMINAL PETITION NO. 2 OF 2020

(CORAM: R. E. ABURILI - J.)

CARILUS OMONDI MBOGA.....1ST APPLICANT

ROSEMARY APONDI OMONDI.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being a Petition for Revision of Sentence in Kisumu CM's Court, Criminal Case No. 6 of 2009)

JUDGMENT

1. The documents in support of the Petition herein for resentencing show that the Petitioner had the Court of Appeal reduce his mandatory death sentence to a custodial fixed term. In addition, the original trial was vide Kisumu Chief Magistrate's Court Cr Case No. 6 of 2009. The court with jurisdiction to consider a petition for resentencing on merit is Kisumu High Court not Siaya High Court.

2. Nonetheless, the Court of Appeal having reduced the mandatory death sentence to 30 years imprisonment on 31/10/2019, this court has no jurisdiction to interfere with the discretion of the Court of Appeal which took into account the *Francis Muruatetu v Republic SC Pet. 15/2015* decision on the constitutionality of the mandatoriness of death sentence.

3. This Petition is accordingly dismissed and the file is hereby closed.

4. Orders accordingly.

Dated, signed and delivered at Siaya, this 18th day of February, 2020

R.E. ABURILI

JUDGE

In the presence of:

Carilus Omondi Mboga, 1st Petitioner

Rosemary Apondi Omondi, 2nd Petitioner

Mr. Okachi, Senior Principal Prosecution Counsel for Respondent

Court Assistants: Brenda Achieng and Modestar Mutiemani