



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CONSTITUTIONAL PETITION NO. 5 OF 2019**

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

**BENARD OKUTOYI MURONO.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. This petition seeks for resentencing of the petitioner following his conviction for murder in **Siaya High Court Criminal Case No 31 of 2015 Republic Versus Julius Shikuku Murono and Bernard Okutoyi Murono**, on the ground that the petitioner was sentenced to death for the offence of murder by this court (Hon J.A. Makau J.) on 30<sup>th</sup> January 2017, which sentence, according to the petitioner, was unconstitutional as espoused in the **Francis Karioko Muruatetu v Republic SC Pet 15 &16 of 2015**.

2. The petitioner and his brother co accused/convict **Julius Shikuku Murono** appealed to the **Court of Appeal vide CA CR A No. 31 of 2017** and have been claiming that they withdrew the Appeal but there is no evidence of such withdrawal. The trial Court record has never been resubmitted to this court despite several reminders to the Registrar of the Court of Appeal

3. That notwithstanding, as the impugned judgment was rendered by this Court by (Hon. Makau J), this court has no jurisdiction to review the sentence imposed on the Petitioners as that would amount to sitting on its own appeal.

4. Accordingly, this petition is struck out for want of jurisdiction, and as there is no evidence from the Court of Appeal rejecting the petitioner's appeal.

5. This file is closed

6. Orders accordingly.

**Dated, signed and delivered this 6<sup>th</sup> Day of November 2019.**

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

Petitioner in person

Mr Okachi Senior Principal Prosecution Counsel for the State

CA: Winnie and Modestar