

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL REVISION NO. 120 OF 2020

DENNIS OKELLO MATEBA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This matter was placed before me for the purpose of giving direction, in view of the recent decision by the Supreme Court in *Francis Karioko Muruatetu & Another Vs. Republic; Katiba Institute & 5 others (Amicus Curiae [2021])* (Koome CJ&P, Mwilu DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola SSJJ), with respect to mandatory sentences, where it was clarified that the decision in *Francis Karioko Muruatetu & another vs. Republic [2017]* eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), had arisen from proceedings relating to murder, under section 204 of the Penal Code, Cap 63 laws of Kenya, and the position stated in the said decision was intended to apply only to mandatory sentences with respect to murder cases.

2. The motion herein, dated 6th august 2020, filed herein on even date, is principally founded on the decision, in *Francis Karioko Muruatetu & Another vs. Republic [2017]* eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), for the applicant seeks review of his sentence, where he had been convicted of defilement, contrary to section 8(1)(3) of the Sexual Offences Act, No. 3 of 2006, in Kakamega CMCCRC No. 74 of 2012, and was sentenced to serve twenty years in prison. He filed appeals in Kakamega HCCRA No. 110 of 2014 and Kisumu CACRA No. 19 of 2015, both of which were dismissed.

3. The offence, the subject of the instant proceedings, is not murder, but defilement, as defined in section 8(1)(3) of the Sexual Offences Act, the decision in *Francis Karioko Muruatetu & another vs. Republic[2017]*eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), therefore, does not apply to it. As a consequence, the High Court has no jurisdiction to review the sentence that was imposed by the trial court, in view of the directions given in in *Francis Karioko Muruatetu & Another Vs. Republic; Katiba Institute & 5 others (Amicus Curiae [2021])* (Koome CJ&P, Mwilu DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola SSJJ). The application is incompetent. The file herein is to be closed. Let the applicant seek review of this sentence administratively through the prisons system, the ministry of interior and the Advisory Committee on the Power of Mercy.

4. The Deputy Registrar shall cause copies of this ruling to be availed to the applicant and the office of Director of Public Prosecutions, Kakamega.

PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 14TH DAY OF JANUARY, 2022

W MUSYOKA

JUDGE