

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 104 OF 2019

GEOFFREY KIBET MUSONIK.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This matter was placed before me for the purpose of giving directions, 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 application herein, dated 8th December 2021, 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 arson, contrary to section 332 of the Penal Code, by the Tamu Senior Resident Magistrate's Court, and was sentenced to serve twelve years in prison. He did not file appeal. He seeks review on grounds that he has reformed.

3. The offence, the subject of the instant proceedings, is not murder, but arson, as defined in section 332 of the Penal Code, 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 *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.

4. The sort of review that the applicant seeks is not available through court intervention, but rather through administrative means. Under the Prisons Act, Cap 90, Laws of Kenya, there is provision for parole or remission. The Constitution also provides for exercise of mercy by way of Presidential clemency, under Article 133 of the Constitution. Primarily, a court can only exercise jurisdiction, with respect to sentencing, within the confines of the Criminal Procedure Code, Cap 75, Laws of Kenya, upon conviction and through revision, and appeal. It can also deal with sentencing upon a constitutional petition, where it is established that there was some constitutional violation. However, once a person has been properly convicted and sentenced, whether remission or parole or review of sentence should be done, outside a sentencing hearing, appeal or through a proper constitutional petition, are administrative matters that ought to be dealt with through the Ministry of Interior, which is responsible for prisons and correctional institutions. The court can only intervene where there is allegation of abuse of process by the Ministry or the relevant agencies within the Ministry. The court intervenes only where there is a problem with the way the administrative organs responsible for correction services are executing their mandate with respect to individual convicts. The mere fact that the sentence was imposed by a court of law does not mean that the court will have a role thereafter to review sentence midway.

5. 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