

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL PETITION NO. 7 OF 2018

HARUN MAMBILI LUBEMBE.....PETITIONER

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 petition herein, undated, was filed herein on 2nd May 2018, 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 murder, contrary to section 203, as read with section 204, of the Penal Code, in Kakamega HCCRC No. 51 of 1996, and was sentenced to death. He appealed, in Kisumu CACRA No. 103 of 2000, the appeal was dismissed and the sentence upheld. He claims to be serving a life sentence, but it is not clear whether that was what he was convicted of, as he has not attached any of the judgments to his petition.

3. The offence, the subject of the instant proceedings is murder, as defined in 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 therefore apply to it. As a consequence, the High Court has 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).

4. However, the decision in *Francis Karioko Muruatetu & another vs. Republic [2017]* eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), is limited to the mandatory sentence of death. I have no material before me which suggests that that was the sentence that was imposed by the trial court and confirmed by the appellate court. He talks of life imprisonment, and not the death sentence. Consequently, I do not see the basis upon which *Francis Karioko Muruatetu & another vs. Republic [2017]* eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ) can be applied in the matter before me for review purposes. The petition is, therefore, incompetent and is hereby dismissed.

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

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

W MUSYOKA

JUDGE