



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 70 OF 2019**

**ISIAH OKINDA NYANGWESO alias HARAMBEE.....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 23<sup>rd</sup> July 2019, filed herein on 12<sup>th</sup> September 2019, is not 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 does not seek review of his sentence, where he had been convicted of defilement, contrary to section 8(1)(4) of the Sexual Offences Act, No. 3 of 2006, in Butere SRMCCRC No. 376 of 2012, but seeks leave to file appeal out of time.

3. The Deputy Registrar should cause the matter to be listed before the Judge, for disposal of the application for leave to file appeal out of time. 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 14<sup>TH</sup> DAY OF JANUARY 2022**

**W MUSYOKA**

**JUDGE**