



REPUBLIC OF KENYA



KENYA LAW
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**Achesa v Republic (Criminal Petition 107 of 2019)
[2022] KEHC 10466 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10466 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION 107 OF 2019**

WM MUSYOKA, J

JUNE 24, 2022

BETWEEN

SHABAN OKUMU ACHESA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The undated petition herein, filed on October 9, 2020, seeks re-sentencing. The petitioner had been convicted in Mumias PMCCRC No. 3 of 2017, of robbery with violence and rape, and was given the mandatory death penalty, which was reduced to imprisonment for ten years, following orders made in Kakamega HCCRA No. 64 of 2018, which declared the sentence unconstitutional and remitted the matter to the trial court for re-sentencing on the robbery with violence conviction.
2. The petition, no doubt, rides on the decision in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), where the court appeared to lay down a general principle that all mandatory sentences were unconstitutional, and to allow trial and appellate courts discretion to re-visit cases where mandatory sentences had been imposed, with a view to revising or reviewing them.
3. The Supreme Court has since re-visited the issue in *Francis Karioko Muruatetu & another vs. Republic; Katiba Institute & 5 others (Amicus Curiae)* [2021] eKLR (Koome CJ & P, Mwilu DCJ & VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko SCJJ), and clarified that its decision in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ) was of application only in murder cases, and not any other.
4. The offence that the petitioner was convicted of was robbery with violence, as defined in the *Penal Code*, Cap 63, Laws of Kenya. The decision in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ) is,



therefore, of no application, and I have no discretion or jurisdiction to do that which the petitioner is inviting me to do.

5. From the tenor of the pleadings, it is clear that the applicant benefited from *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), before the clarification in *Francis Karioko Muruatetu & another vs. Republic; Katiba Institute & 5 others (Amicus Curiae)* [2021] eKLR (Koome CJ & P, Mwilu DCJ & VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko SCJJ). The issue of his sentence being re-visited for a second time for review is not tenable.
6. The undated Motion filed on December 16, 2019 is, therefore, not merited, and it is in abuse of court process. Let copies of these proceedings be availed to Shaban Okumu Achesa and to the Office of Director of Public Prosecutions Kakamega.

DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS 24TH DAY OF JUNE 2022

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Shaban Okumu Achesa, the petitioner, in person.

Mr. Mwangi, instructed by the Director of Public Prosecutions, for the respondent.

