



REPUBLIC OF KENYA



**Musindalo v Republic (Criminal Petition 33 of 2018)
[2022] KEHC 10471 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION 33 OF 2018
WM MUSYOKA, J
JUNE 24, 2022**

BETWEEN

ALI BAKARI MUSINDALO PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The petition dated 5th July 2018, seeks review of sentence on the basis of *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 revisit cases where mandatory sentences had been imposed, with a view to revising or reviewing them.
2. The petitioner had been convicted of robbery with violence, contrary to section 296(2) of the *Penal Code*, Cap 63, Laws of Kenya, in Kakamega CMCCRC No. 3512 of 2014. He lodged an appeal in Kakamega HCCRA No. 89 of 2016, whose fate he does not disclose.
3. The Supreme Court has clarified, 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), 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. The petition, dated 5th July 2018, is, therefore, incompetent, and I hereby strike it out. Let copies of these proceedings be availed to Ali Bakari Musindalo and to the Director of Public Prosecutions.

DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS 24th DAY OF June 2022.

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Ali Bakari Musindalo, the petitioner, in person.

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

