



REPUBLIC OF KENYA



KENYA LAW
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**Mutongoi v Republic (Criminal Petition 71 & 86 of 2019)
[2022] KEHC 3340 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION 71 & 86 OF 2019**

WM MUSYOKA, J

JUNE 24, 2022

BETWEEN

JOSEPH LIKABO MUTONGOI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The petitions filed on divers dates in 2019 in Kakamega HCCR Petition No. 71 of 2019 and Kakamega HCCR Petition No. 86 of 2019 are by the same person. It is not altogether clear what the petitioner would like the court to do, but it would appear to be review of sentence, founded on *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ &VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ).
2. The petitioner was convicted, in Kakamega HCCCRC No. 32 of 2005, of murder, contrary to section 203 and 204 of the *Penal Code*, Cap 63, Laws of Kenya, and was sentenced to death on 2nd November 2010. He lodged an appeal against conviction and sentence, in Kisumu CACRA No. 440 of 2010, and his appeal was dismissed on 20th December 2013. He avers that the death sentence was commuted by the President of the Republic to life imprisonment.
3. As indicated above, the petitions are couched in imprecise language, which suggests that the petitioner seeks more than just review of sentence under *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ &VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ). However, I note that he filed an appeal, which was resolved in Kisumu CACRA No. 440 of 2010, and he now cannot seek revision on any of the issues that ought to have been placed before the appellate court.
4. On review of sentence, founded on, *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ &VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), I note that the



death sentence has since been converted to life imprisonment. The petitioner is no longer under a death sentence, and there is nothing for me to review under Francis Karioko Muruatetu & another v Republic [2017] eKLR (Maraga CJ & P, Mwilu DCJ &VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), as that decision related only to the death sentence.

5. Consequently, the petitions before me are not competent, and I hereby strike them out. Copies of this ruling to be made available to the applicant and the Office of 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.

Joseph Likabo Mutongoi, the applicant, in person.

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

