



REPUBLIC OF KENYA



**Muyekho v Republic (Miscellaneous Criminal Application
E095 of 2021) [2022] KEHC 3152 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3152 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E095 OF 2021**

WM MUSYOKA, J

JUNE 24, 2022

BETWEEN

LEONARD MUYEKHO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Motion, undated, but filed herein on 9th December 2021, is premised on section 333(2) of the [Criminal Procedure Code](#), Cap 75, Laws of Kenya. The applicant would like the time he spent in remand be reckoned in determining his final sentence.
2. He avers that the trial court had sentenced him to death for robbery with violence, under section 292(2) of the [Penal Code](#), Cap 63, Laws of Kenya. His appeals were all dismissed. The death penalty was subsequently substituted with twenty years imprisonment on the basis of [Francis Karioko Muruatetu & another v Republic](#) [2017] eKLR (Maraga CJ & P, Mwilu DCJ &VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ).
3. The applicant has an arguable case. It merits consideration, but I will not be able to exercise discretion under section 333(2) of the [Criminal Procedure Code](#), unless I have sight of the trial records, and the appeal records from the High Court and the Court of appeal.
4. Consequently, I do hereby direct the Deputy Registrar to call for the trial records in Butali PMCRCC No. 123 of 2008, and the judgements in Kakamega HCCRA No. 76 of 2010 and Kisumu CACRA No. 60 of 2014, and the ruling in Kakamega HCCPet. No. 58 of 2018.
5. The matter shall be mentioned on 28th July 2022. A production order shall issue. 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



W M MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Leonard Muyekho, the applicant, in person.

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

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