



**Mwenge v Republic (Criminal Petition 37 of 2020)  
[2022] KEHC 10470 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10470 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL PETITION 37 OF 2020  
WM MUSYOKA, J  
JUNE 24, 2022**

**BETWEEN**

**SAMSON MWENGE ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The undated petition, filed herein on October 9, 2020, seeks re-sentencing. The petitioner had been convicted in Kakamega CMCCRC No 510 of 2010, of robbery with violence, and was given the mandatory death penalty, which was commuted to life imprisonment by the President of the Republic of Kenya.
2. The petition, no doubt, rides on the decision in *Francis Karioko Muruatetu & another v 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 v Republic; Katiba Institute & 5 others (Amicus Curiae)* [2021] eKLR (Kooame CJ & P, Mwilu DCJ & VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko SCJJ), and clarified that its decision in *Francis Karioko Muruatetu & another v 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 v 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 petitioner has benefited from a review of the death sentence, when the President exercised the prerogative of mercy, by commuting the death sentence imposed by the trial court and substituted it with life imprisonment. What the petitioner is inviting me to do has already been done by the President of the Republic, and the death penalty I am asked to review is no longer in force.
6. The undated petition filed on 9<sup>th</sup> October 2020 is, therefore, incompetent, and I hereby strike it out. Let copies of these proceedings be availed to Samson Mwenge and to the Office of Director of Public Prosecutions Kakamega.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS.....24<sup>th</sup> .....  
....DAY OF .....June .....2022**

**WM MUSYOKA**

**JUDGE**

**Erick Zalo, Court Assistant.**

**Samson Mwenge, the petitioner, in person.**

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

