



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okeda v Republic (Criminal Petition 58 of 2018)  
[2022] KEHC 10469 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10469 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL PETITION 58 OF 2018  
WM MUSYOKA, J  
JUNE 24, 2022**

**BETWEEN**

**JOSEPH OKEDA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The “constitution application,” dated 3<sup>rd</sup> July 2018, seeks a re-sentencing hearing 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 a criminal case at the Kakamega Chief Magistrate’s court, whose details he does not disclose. He lodged an appeal at the High Court at Kakamega, being HCCRA No. 48 of 2010, which affirmed the conviction and confirmed the sentence.
3. The Supreme Court has clarified, in *Francis Karioko Muruatetu & another vs. Republic; Katiba Institute & 5 others (Amicus Curiae)* [2021] eKLR (Koombe 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 “constitution application,” dated July 3, 2018, is, therefore, incompetent, and I hereby strike it out. Let copies of these proceedings be availed to Joseph Okeda and to the Director of Public Prosecutions.

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

**WM MUSYOKA**

**JUDGE**

Erick Zalo, Court Assistant.

Joseph Okeda, the petitioner, in person.

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

