



REPUBLIC OF KENYA



KENYA LAW
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**Wamukoya v Republic (Miscellaneous Criminal Case
2 of 2020) [2022] KEHC 3084 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3084 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL CASE 2 OF 2020**

WM MUSYOKA, J

JUNE 24, 2022

BETWEEN

RAMADHAN RAJAB WAMUKOYA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The undated Motion filed herein on 8th January 2020, seeks re-sentencing. The petitioner had been convicted of robbery with violence, contrary to section 296(2) of the *Penal Code*, Cap 63, Laws of Kenya, and was sentenced to twenty years imprisonment. His appeal to the High Court in Kakamega was dismissed.
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. 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. It would appear that the applicant benefitted from the discretion given in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ &VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), for the penalty for the offence of robbery with violence is mandatory death, but instead of the trial court imposing the sentence prescribed by the law, it awarded him twenty years in jail. That which he asks me to do was done by the trial court. His case does not fall within the threshold of *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ &VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ).
6. The undated petition filed on 8th January 2020 is, therefore, incompetent, and I hereby strike it out. Let copies of these proceedings be availed to Ramadhan Rajab Wamukoya and to the Office of Director of Public Prosecutions Kakamega.

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

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Ramadhan Rajab Wamukoya, the petitioner, in person.

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

