



REPUBLIC OF KENYA



**Wanyama v Republic (Criminal Petition 16 of 2019)
[2022] KEHC 3180 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3180 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION 16 OF 2019
WM MUSYOKA, J
JUNE 24, 2022**

BETWEEN

SYLVESTER MATEKWA WANYAMA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The undated petition filed herein on 5th March 2019, seeks re-sentencing. The petitioner had been convicted in Kakamega CMCCRC No. 426 of 2013, of robbery with violence, contrary to section 296(2) of the *Penal Code*, Cap 63, Laws of Kenya, and was given the mandatory death penalty, which was commuted to life imprisonment by the President of the Republic of Kenya. His appeal to the High Court in Kakamega HCCRA No. 231 of 2013 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 (Koome 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. The petitioner has benefitted 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, to 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inviting me to do has already been done by the President of the Republic, and the death penalty I am asked to review is no longer in force.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 5th March 2019 is, therefore, incompetent, and I hereby strike it out. Let copies of these proceedings be availed to Sylvester Matekwa Wanyama 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.

Sylvester Matekwa Wanyama, the petitioner, in person.

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

