



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**PETITION NO. 69 OF 2019**

**AND**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 101 OF 2019**

**DENNIS OKENO.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. This matter was placed before me for the purpose of giving directions, in view of the recent decision by the Supreme Court in *Francis Karioko Muruatetu & another vs. Republic; Katiba Institute & 5 others (Amicus Curiae* [2021] (Koome CJ&P, Mwilu DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola SSJJ), with respect to mandatory sentences, where it was clarified that the decision, in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), had arisen from proceedings relating to murder, under section 204 of the Penal Code, Cap 63, Laws of Kenya, and the position stated in the said decision was intended to apply only to mandatory sentences with respect to murder cases.

2. The Motion in Petition No. 69 of 2019, is undated, but was filed herein on 20<sup>th</sup> September 2019, and that in Miscellaneous Criminal Application No. 101 of 2019, is also undated, but was filed herein on 18<sup>th</sup> November 2019. Both are not founded on the decision, in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), for the petitioner/applicant seeks leave to file appeal against his conviction and sentence in Hamisi SRMCCRC No. 713 of 2012, out of time.

3. The matter was placed before me on 5<sup>th</sup> March 2020, and I consolidated the two matters, and directed that the Deputy Registrar calls for the file in Hamisi SRMCCRC No. 713 of 2012. To this day the original trial records from the trial court have never been availed. That has taken too long, and the petitioner is being prejudiced with respect to having his simple application for leave to file appeal being heard and determined.

4. As a way forward, I direct the Deputy Registrar to have this matter placed before the Judge, with notice to the parties, for either mention for directions or for hearing of the Motion for leave to file appeal out of time. If need be, the Deputy Registrar should send an officer to Hamisi law courts, to pick the original records in Hamisi SRMCCRC No. 713 of 2012. The Deputy Registrar shall also cause copies of this ruling to be availed to the applicant and the office of the Director of Public Prosecutions, Kakamega, and the Judicial Officer in charge of the Hamisi Law Courts

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 20TH DAY OF DECEMBER 2021**

**W MUSYOKA**

**JUDGE**