

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL PETITION NO. 91 OF 2019

CALEB OJWANDO OCHIDO.....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 herein, undated, was filed herein on 22nd November 2019, and it is principally 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 applicant seeks review of his sentence, where he had been convicted of murder, contrary to section 203, as read with section 204, of the Penal Code, in Kakamega HCCRC No. 14 of 2001, and was sentenced to death. He filed an appeal at the Court of Appeal at Kisumu, being Kisumu CACRA No. 115 of 2005, which was dismissed.

3. The offence, the subject of the instant proceedings, is murder, the decision in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), therefore, does apply to it, in view of the directions given 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).

4. The Deputy Registrar shall cause the court file in Kakamega HCCRC No. 14 of 2001 to be put together with the instant file, and shall call for the records in Kisumu CACRA No. 115 of 2005. The matter shall thereafter be mentioned before the Judge for directions on disposal. Copies of this ruling shall be availed to the petitioner and the Director of Public Prosecutions, Kakamega.

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

W MUSYOKA

JUDGE