

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL PETITIONS NOS. 54 AND 55 OF 2018

JOASH ANGATIBA1ST PETITIONER

SULEIMAN MOHAMMED.....2ND 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 petitions herein, dated 12th November 2018, filed herein on 14th November 2018, are 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 petitioners seek review of their sentences, where they had been convicted of robbery with violence, contrary to section 296(2) of the Penal Code, Cap 63, Laws of Kenya, in Kakamega CMCCRC No. 855 of 2003, and were sentenced to death, later commuted to life imprisonment by the President of the Republic of Kenya. They filed appeals at the High Court at Kakamega, being HCCRA Nos. 103 of 2009 and 2 of 2005, respectively, both of which were dismissed. They allude to having filed appeals at the Court of Appeal, at Kisumu, but details have not been furnished.

3. The offence, the subject of the instant proceedings, is not murder, but robbery with violence, as defined in the Penal Code, 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 not apply to it. As a consequence, the High Court has no jurisdiction to review the sentence that was imposed by the trial court, 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). The petitions are incompetent. The files herein are to be closed.

4. The Deputy Registrar shall cause copies of this ruling to be availed to the petitioners and the office of Director of Public Prosecutions, Kakamega.

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

W MUSYOKA

JUDGE