



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 4 OF 2020**

**NICODEMUS ONIANGO BILASIO.....APPLICANT**

**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, dated 13<sup>th</sup> January 2020, filed herein on an unknown date, is 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 does not seek review of sentence, but seeks leave to file appeal out of time.

3. The file was placed before me in chambers on 14<sup>th</sup> May 2020, and I noted that the affidavit in support of the Motion was not commissioned, and I directed that it be commissioned first before directions could be taken. I note that since then the affidavit was commissioned, on some unknown date, but the file was never placed before a Judge for orders. This is clear injustice to the applicant, for the offence that led to his incarceration was a minor one, cheating, and this matter should have been handled bearing in mind that time was ticking. The Deputy Registrar should have had the file placed before a Judge for hearing of that Motion, with notice to the applicant and the Director of Public Prosecutions, as soon as the affidavit was commissioned.

4. The Deputy Registrar shall cause copies of this ruling to be availed to the applicant and the office of Director of Public Prosecutions, Kakamega, and shall fix a date for the hearing of the Motion dated 13<sup>th</sup> January 2020 forthwith.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 20<sup>th</sup> DAY OF December 2021**

**W MUSYOKA**

**JUDGE**