



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 54 OF 2017**

**PETER LODINYO KINGETICH .....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 15<sup>th</sup> June 2017, was filed herein on even date, and it 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 applicant does not seek review of his sentence, but stay of proceedings that were or are pending before the court in Mumias SPMCCRC No. 1074 of 2016, and transfer of that matter to another court.

3. Orders were made herein, on 16<sup>th</sup> June 2017 and 24<sup>th</sup> June 2019, calling for the records in Mumias SPMCCRC No. 1074 of 2016. There is mandate under the Constitution, under Article 165(6)(7), for the High Court to call for records of the subordinate courts that it supervises. Those orders have never been complied with, despite the Deputy Registrar writing to the subordinate court on 19<sup>th</sup> June 2017, 31<sup>st</sup> July 2018, 26<sup>th</sup> July 2019, 26<sup>th</sup> September 2019, 26<sup>th</sup> April 2021 and 7<sup>th</sup> June 2021. I do not see the original file in Mumias SPMCCRC No. 1074 of 2016. The Deputy Registrar should forthwith dispatch a runner to the Mumias law courts for retrieval of the file in Mumias SPMCCRC No. 1074 of 2016. It is very embarrassing when it appears that courts do not obey orders directed to them by courts superior to them in hierarchy, yet they expect those outside the court system to obey orders directed to them. I am unable to exercise my mandate, under Article 165(6)(7) of the Constitution, as it appears that there is either unwillingness to avail files that I have called for or sheer dereliction of duty.

4. For avoidance of doubt, Article 165(6)(7) of the Constitution states as follows:

*“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.*

*(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”*

5. The Deputy Registrar shall cause copies this ruling to be availed to the applicant and the office of Director of Public Prosecutions, Kakamega. The Deputy Registrar shall also extract the orders of 16<sup>th</sup> June 2017 and 24<sup>th</sup> June 2019, and avail them to the Judicial Officer in charge of the Mumias law courts, together with a copy of this ruling and copies of all the letters written to that court calling for the original records. A mention day shall be allocated at the earliest to confirm compliance.

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

**W MUSYOKA**

**JUDGE**