



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 59 OF 2018**

**WYCLIFFE AKWERI SONGOLE.....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, undated, was filed herein on 6<sup>th</sup> June 2018, 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 bond pending trial in Kakamega CMCCRC No. 54 of 2018.

3. An order was made on 4<sup>th</sup> March 2019, calling for the records of the trial court. 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. That order has never been complied with, despite the Deputy Registrar writing on 24<sup>th</sup> May 2019, calling for those records, for I do not see the original file in Kakamega CMCCRC No. 54 of 2018. The Deputy Registrar shall send a senior registry officer to the Kakamega Chief Magistrate's Court criminal registry to retrieve the file relating to Kakamega CMCCRC No. 54 of 2018. It is extremely 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 judicial system to obey orders directed to them by the courts. 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, and the Judicial Officer in charge of the Kakamega Chief Magistrate's Court. A mention day shall be allocated at the earliest to confirm compliance.

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

**W MUSYOKA**

**JUDGE**