



**Omukanga v Republic (Criminal Petition 7 of 2019)
[2023] KEHC 3667 (KLR) (3 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3667 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL PETITION 7 OF 2019**

REA OUGO, J

APRIL 3, 2023

BETWEEN

OPRODI PETER OMUKANGA PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. Oprodi Peter Omukanga , the Petitioner, has filed a petition and seeks the following orders; that the court grants orders for revision of sentence in respect in respect of Robbery with Violence contrary to section 296 (2) of the *Penal Code* in CRC No. 27 of 2011 at CM’s Court Bungoma. That whilst effecting the said order the court should consider the period spent in custody from the time of his arrest.
2. The petitioner admits that his appeal before the High court was heard and was dismissed. The Respondent has opposed the Petition on ground that this court lacks the jurisdiction to hear the petition as the petitioner’s appeal was heard and dismissed by a court of equal jurisdiction. The petition relies in the Supreme Court Ruling, though not mentioned in his petition, I believe he is referring to the case of Francis Muruatetu.
3. I agree with the Respondent that this court lacks the jurisdiction to grant the orders being sought as a court of similar jurisdiction heard the petitioner’s appeal and dismissed it. The directions given on 6th July 2021 by the Supreme Court in the case of *Francis Karioko Muruatetu & Another vs Republic* [2017] eKLR was that the said decisional law is not an authority to declare all mandatory or minimum sentences unconstitutional. Its application was limited to murder cases falling within its scope. Therefore, the petitioner’s being a case of robbery with violence, the request by the petitioner for review of sentence on the basis of Muruatetu case is without merit . His petition therefore fails and is dismissed.



**DATED, SIGNED AND DELIVERED AT BUNGOMA VIA MICROSOFT TEAMS THIS 3RD
APRIL 2023.**

R.E.OUGO

JUDGE

In the presence of;

Petitioner in person

Mr. Ayekha For the State/Respondent

Okwaro C/A

