



**Bwire v Republic (Criminal Petition E008 of 2022)
[2023] KEHC 23350 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23350 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL PETITION E008 OF 2022
WM MUSYOKA, J
OCTOBER 13, 2023**

BETWEEN

HENRY MULAMBA BWIRE PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The application, dated January 11, 2022, principally seeks re-sentencing. The petitioner had been convicted, in Busia HCCRC No 11 of 2012, of murder, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya, which attracts, upon conviction, a penalty of mandatory death, and the trial court had imposed that sentence, on November 20, 2014. His appeal to the Court of Appeal, in Kisumu HCCRA No 46 of 2016, was dismissed, as per the judgment of November 21, 2019.
2. The application rides on the decision in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), where the court laid down a general principle that all mandatory sentences were unconstitutional, and allowed trial and appellate courts discretion to re-visit cases where mandatory sentences had been imposed, with a view to revising or reviewing them. The Supreme Court re-visited the issue, in *Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* [2021] eKLR (Koome CJ&P, Mwilu DCJ&VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ), and stated that its decision in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ) was of application only in murder cases.
3. I note from the judgment of the Court of Appeal, reported as *Henry Mulamba Bwire & another v Republic* [2019] eKLR (Nambuye, Makhandia & Kantai, JJA), that the death penalty was set aside, and substituted with imprisonment for 25 years. As *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ) was applied



by the Court of Appeal in *Henry Mulamba Bwire & another v Republic* [2019] eKLR (Nambuye, Makhandia & Kantai, JJA), I cannot revisit the sentence. I have no jurisdiction. If the petitioner feels that he has reformed sufficiently, then let him canvass the matter within the prison system, for remission of sentence, or with the Mercy Committee for consideration.

4. Accordingly, there is no merit in the application, dated January 11, 2022, and I hereby dismiss it. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 13TH DAY OF OCTOBER 2023

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Henry Mulamba Bwire, the petitioner, in person.

Mrs. Chekonga, instructed by the Director of Public Prosecutions, for the respondent.

