



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CRIMINAL APPLICATION NO. 33 OF 2019**

**ANDREW PEKU OTANGA.....PETITIONER**

**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 chamber summons herein, dated 22<sup>nd</sup> May 2019, but filed herein on an unknown date, principally rides 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 seek review of his sentence, where he had been convicted of robbery with violence, under section 296(2) of the Penal Code, Cap 63, Laws of Kenya, in Vihiga PMCCRC No. 1713 of 2001, and was sentenced to death, later commuted to life imprisonment by the President of the Republic of Kenya. He filed appeals in Kakamega HCCRA No. 263 of 2002 and Kisumu CACRA No. 262 of 2009, the appellate courts dismissed the appeals and affirmed the conviction.

3. The application herein is brought by the same person as the that in Kakamega High Court Criminal Petition No. 78 of 2019. The instant application was the first in time, but since I have already dealt with Kakamega High Court Criminal Petition No. 78 of 2019, I shall treat the pendency of the instant matter as an abuse of court process, since the two matters were filed by the same person, based on the same facts, and seeking similar or the same orders. The application herein is struck out and the file shall be closed.

4. The Deputy Registrar shall cause copies this ruling to be availed to the applicant and the office of Director of Public Prosecutions, Kakamega.

**PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2021**

**W MUSYOKA**

**JUDGE**