

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISCELLANEOUS CRIMINAL APPLICATION NO. E058 OF 2021

ATHANAS KHAEMBA BAKWEA.....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 application herein, the undated Motion filed herein on 22nd April 2021, 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 applicant seeks review of his sentences, where he had been convicted of robbery with violence, under section 296(2) of the Penal Code, Cap 63, Laws of Kenya, in Kakamega CMCCRC Nos. 1268 of 2009 and 452 of 2010, and was sentenced to ten and fifteen years imprisonment, respectively. He filed appeals in Kakamega HCCRA Nos. 173 of 2011 and 211 of 2011, and Kisumu CACRA No. 41 of 2014, the appellate courts affirmed the convictions in Kakamega CMCCRC Nos. 1268 of 2009 and 452 of 2010, and confirmed the sentences.

3. The application herein is brought by the same applicant as in Kakamega High Court Miscellaneous Application No. 43 of 2020, and it is based on the same set facts, and seeks similar or the same orders. Kakamega High Court Miscellaneous Application No. 43 of 2020 was the first to be filed, and, therefore, the instant application was filed in abuse of court process, and it is hereby struck out.

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

PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 15TH DAY OF NOVEMBER, 2021

W MUSYOKA

JUDGE