



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. E011 OF 2021**

**AGABITUS MILIMO INGAVI.....1<sup>ST</sup> APPLICANT**

**DESMOND SHIVONJE.....2<sup>ND</sup> 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 petition herein, undated and 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 seeks review of his sentence, where he had been convicted of robbery with violence, under section 296(2) of the Penal Code, in Kakamega CMCCRC No. 3786 of 2016. He filed appeal in Kakamega HCCRA No. 90 of 2017, which was consolidated with Kakamega HCCRA No. 92 of 2017.

3. The offence, the subject of the instant proceedings, is not murder, but robbery with violence, as defined in section 296(2) of the Penal Code, the decision in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), therefore, does not apply to it. As a consequence, the High Court has no jurisdiction to review the sentence that was imposed by the trial court, based on the decision 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). Since there is no jurisdiction on my part to entertain the petition, I shall strike it out, for it is incompetent. The said file shall be closed.

4. The Deputy Registrar to cause copies of this ruling to be availed to the petitioner and the office of the Director of Public Prosecutions.

**PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 12<sup>TH</sup> DAY OF NOVEMBER 2021**

**W MUSYOKA**

**JUDGE**