



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CRIMINAL APPLICATION NO. 43 OF 2020**

**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 10<sup>th</sup> February 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 sentence, where he had been convicted of robbery with violence, under section 296(2) of the Penal Code, , 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 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 application, I shall strike it out, for it is incompetent. The said file shall be closed.

4. In any event, the trial court applied the principles in *Francis Karioko Muruatetu & another vs. Republic*; [2017] (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Ibrahim, Wanjala, Njoki & Lenaola SSJJ), although the sentences were imposed pre- *Francis Karioko Muruatetu & another vs. Republic*; [2017] Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Ibrahim, Wanjala, Njoki & Lenaola SSJJ).

5. The Deputy Registrar shall cause copy 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 12<sup>TH</sup> DAY OF NOVEMBER 2021**

**W MUSYOKA**

**JUDGE**