



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 84 OF 2019**

**ATNAS NANDI SHITANDI.....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 7<sup>th</sup> February 2021, does not appear to be based on *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ). The applicant had been convicted of robbery with violence, under section 296(2) of the Penal Code, in Kakamega CMCCRC Nos. 3920 of 2016, and was sentenced to thirty-three years imprisonment. He filed an appeal in Kakamega HCCRA No. 119 of 2018, and the appellate court reduced his sentence to fifteen years imprisonment. He is seeking review, not on the basis of *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), but medical grounds.

3. Let the Deputy Registrar cause the matter to be fixed for mention, with notice to the applicant and the Kakamega office of the Director of Public Prosecutions. The Deputy Registrar shall also cause this file to be put together with the file in Kakamega HCCRA No. 119 of 2018. The Kakamega County Probations and Aftercare Service and the Kenya Prisons Service shall prepare reports on the circumstances of the applicant. Directions on the disposal of the application shall be given at the mention. The Deputy Registrar, shall cause copies of this ruling to be availed to the applicant, the Kakamega office of Director of Public Prosecutions, Kakamega County Probation and Aftercare Services and the Kenya Prisons Service.

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

**W MUSYOKA**

**JUDGE**