

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL PETITION NO. E052 OF 2021

BENARD MUSINDI.....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 petition herein, undated, but filed herein on 22nd April 2021, seeks the reckoning of the time spent in remand in determination of sentence. The petitioner was convicted of robbery with violence, contrary to section 296(2) of the penal Code, and sentenced to twenty years in jail instead of the mandatory death sentence. *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) clarified that for robbery with violence there was no discretion. In that instant case, the petitioner benefited from a sentence that the trial court ought not to have imposed. He should have been sentenced to death. In the circumstances the review that he seeks is not available. The file shall be closed.

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

PREPARED DATED AND SIGNED AT KAKAMEGA THIS 12TH DAY OF NOVEMBER 2021

W MUSYOKA

JUDGE