

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 72 OF 2020

CHRISTOPHER NDUSI.....1ST APPLICANT

KELVIN SHITAMBASI.....2ND 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. I note that the matter has been handled substantially by Hon. Lady Justice Farah SM Amin, and is at the stage of written submissions and reports by the probation service. Let the matter be placed before the Judge for finalization.

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

W MUSYOKA

JUDGE