



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. E017 OF 2021**

**CONRAD SHICHENDE.....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 Motion herein, dated 5<sup>th</sup> March 2021, and filed herein on even 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 burglary and stealing, under sections 306(b) of the Penal Code, in Kakamega CMCCRC No. 433 of 2020, and was sentenced to serve three years in prison. He elected not to file appeal, but to seek review of sentence.

3. The approach the applicant has chosen is foolhardy. Where an accused person is convicted and sentenced and his aggrieved by the sentence imposed, he files an appeal against sentence. That is what the law establishes. The alternative is to seek revision on grounds that there was an irregularity or impropriety about the process or order made by the court. The applicant does not challenge the sentence on the grounds of either irregularity or impropriety. He lost the opportunity to appeal or to file for revision. The application before court is, therefore, filed irregular and does not lie. The file ought to 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> OF NOVEMBER 2021**

**W MUSYOKA**

**JUDGE**