

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 109 OF 2019

FREDRICK LUVEMBE SHIVANDA.....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 is undated, but was filed herein on 9th December 2019, and it is not premised on *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 on the basis of the revision provisions of the Criminal Procedure Code, Cap 75, Laws of Kenya, which the Supreme Court did not address in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ). This court can quite properly interrogate the issues raised. However, whether it can do so under the revisionary jurisdiction provided for under the Criminal Procedure Code, is a matter to be canvassed at the hearing of the Motion.

3. In the meantime, let the Deputy Registrar call for the original records relating to Kakamega CMCCRC No. 8 of 2021 and the relevant appeal proceedings, and put them together with the instant cause. A date for mention of the matter before the Judge shall be assigned thereafter for directions on disposal.

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

PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 17th DAY OF NOVEMBER 2021

W MUSYOKA

JUDGE