



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 37 OF 2020**

**FELIX MUCHITI.....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, undated, but filed herein on 10<sup>th</sup> February 2021, 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 in Kakamega HCCRC No. 5 of 2010, of murder contrary to sections 203 and 204 of the Penal Code. He lodged appeal in Kisumu CACRA No. 45 of 2015, and says that the Court of Appeal ordered that the matter be remitted to the High Court for resentencing, in a judgment delivered on 3<sup>rd</sup> April 2020. Although he avers that the said judgment is attached to his filings, I have not seen one in the court file.

3. The offence, the subject of the instant proceedings is murder, and the decision in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), therefore, applies to it. The High Court does have jurisdiction to review the sentence that was imposed by it, going by the directions 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).

4. To facilitate review, in terms of *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), I hereby direct the Deputy Registrar to cause the original records in Kakamega HCCRC No. 5 of 2010 to be put together with the instant file, and to call for a certified copy of the judgment in Kisumu CACRA No. 45 of 2015. Once the two records are at hand, let the matter be placed before the Judge for further directions.

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

**PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2021**

**W MUSYOKA**

**JUDGE**