



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CRIMINAL PETITION NO. 83 OF 2019**

**HENRY LIKHANGA LUMITI.....APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS.....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, undated, but filed herein on 22<sup>nd</sup> December 2019, 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. 34 of 2006. He lodged appeal in Kisumu CACRA No. 110 of 2011, but he has not indicated whether the same has determined or not. It is not clear what the offence for which he was convicted and sentenced to death was. There are two affidavits on record, one says it was murder, while the other identifies the offence as robbery with violence. He has not attached any documents from Kakamega HCCRC No. 34 of 2006 and Kisumu CACRA No. 110 of 2011.

3. The pleadings in this matter are convoluted, and in the absence of clarity, it will be impossible for the court to determine whether it has any jurisdiction to review the matter under *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), in view of *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), or not. In any case the appeal in Kisumu CACRA No. 110 of 2011 could still be pending, and the review sought can quite properly be handled within the appeal. I shall strike out the Motion, for it is incompetent. The file shall be closed.

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

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

**W MUSYOKA**

**JUDGE**