

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 97 OF 2019

HENRY LIKHANGA.....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 matter arises from a conviction for murder in Kakamega HCCCRC No. 32 of 2005. 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. Let the Deputy Registrar cause the undated Motion lodged herein on 8th November 2019 be made available to the Director of Public Prosecutions, Kakamega. The application shall be canvassed by way of written submissions, and the County Director of Probation Services and the Kenya Prison Service are hereby directed to prepare and file reports on the circumstances of the applicant.

3. The Deputy Registrar shall fix the matter for mention for further directions, and shall cause copies of this ruling to be availed to the applicant, the Kakamega office of Director and after care of Public Prosecutions, the Kakamega County Director of Probation Services and the Kenya Prisons Service.

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

W MUSYOKA

JUDGE