

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL PETITION NO. 62 OF 2019

JOSEPH KHATIALA.....PETITIONER

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 petition herein, dated 5th August 2019, was filed herein on 6th August 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. 14 of 2008, of murder contrary to sections 203 and 204 of the Penal Code, and sentenced to death. He lodged appeal in Kisumu CACRA No. 2 of 2013, where the conviction for murder was quashed, in 2014, and substituted with that for manslaughter, under section 202 of the Penal Code, and was sentenced to serve twenty years in jail for the manslaughter.

3. The offence, the subject of the instant proceedings is not murder, but manslaughter, as defined in section 202 of the Penal Code, 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, does not apply to it. The High Court does have not jurisdiction to review the sentence imposed by the Court of Appeal in Kisumu CACRA No. 2 of 2013, in view of the directions given 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). As there is no jurisdiction on my part to entertain the petition, I shall strike it out, for it is incompetent. The file herein shall be closed.

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

PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 15TH DAY OF NOVEMBER,

W MUSYOKA

JUDGE