



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CRIMINAL PETITION NO. 35 OF 2020**

**OSCAR LIHANDA.....1<sup>ST</sup> PETITIONER**

**JOSEPHAT ASHIUNDU.....2<sup>ND</sup> PETITIONER**

**SAMWEL OYONDI.....3<sup>RD</sup> PETITIONER**

**CHARLES MZEE.....4<sup>TH</sup> 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 is undated, but was lodged in court on 9<sup>th</sup> June 2020. It principally rides on *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), for the petitioners seek review of their sentences, where they had been convicted of robbery with violence, contrary to section 296(2) of the Penal Code, in Kakamega CMCCRC No. 2972 of 2004, and were sentenced to death, later commuted to life imprisonment by the President of the Republic of Kenya. They lodged appeals in Kakamega HCCRA Nos. 115 to 118 of 2006 and Kisumu CACRA No. 170 of 2014, all of which were dismissed.

3. The petition herein was brought by the same petitioners as in Kakamega HCCCR Petition No. 14 of 2020, based on the same facts, the same criminal matter and the same criminal appeals. Kakamega HCCCR Petition No. 14 of 2020 was filed first, and therefore, the instant petition was filed in abuse of court, in view of the pendency of Kakamega HCCCR Petition No. 14 of 2020. Consequently, I hereby strike out the instant cause.

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 2021**

**W MUSYOKA**

**JUDGE**