

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL PETITION NO. 97 OF 2019

PATRICK M'BARAKA.....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, 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, undated, was filed on 23rd November 2019, is not premised on *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), for the petitioner seeks a declaration that the sentence meted on him, detention during the pleasure of the President of the Republic of Kenya, for robbery with violence, was unconstitutional, on grounds that it amounted to transfer of judicial power to the Executive, and it was, therefore, contrary to the principle of rule of law and separation of powers.

3. The High Court has jurisdiction, therefore, to handle it. Let the Deputy Registrar cause the matter to be fixed for mention, before the Judge, for the purpose of directions on its disposal being given. The Deputy Registrar shall also 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 17TH DAY OF NOVEMBER, 2021

W MUSYOKA

JUDGE