



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. E066 OF 2021**

**PATRICK MUNYANGOLI OMBATI.....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 application herein, the undated Chamber Summons, filed herein on an unknown date, 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 applicant seeks review of his sentence, where he had been convicted of robbery with violence, under section 296(2) of the Penal Code, in Kakamega CMCCRC No. 813 of 2002, and was sentenced to mandatory death. He filed appeal in Kakamega HCCRA No. 226 of 2002 and Kisumu CACRA No. 242 of 2010, which affirmed the conviction in Kakamega CMCCRC No. 813 of 2002, and confirmed the sentence.

3. The application herein is a replica of that filed in Kakamega High Court Miscellaneous Application No. 46 of 2020, by the applicant herein, arising from the same lower court and appeal proceedings. The cause in Kakamega High Court Miscellaneous Application No. 46 of 2020 was the first in time, and the instant application was, therefore, filed in abuse of court, and it is hereby struck out.

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**