

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL PETITION NO. 17 OF 2020

PATRICK SHINYEKWA WANDIBA.....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 petition herein, undated, but filed herein on 18th July 2020, 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. 16 of 1989, of murder contrary to sections 203 and 204 of the Penal Code. He lodged appeal in Kisumu CACRA No. 109 of 1992, which was dismissed in 1995.

3. The offence, the subject of the instant proceedings is murder, 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, applies to it. The High Court does have jurisdiction to review the sentence that was imposed by it, based on the decision 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).

4. To facilitate review, in terms of *Francis Karioko Muruatetu & another vs. Republic [2017]* eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), I hereby direct the Deputy Registrar to call for the original records in Kakamega HCCRC No. 16 of 1989 and Kisumu CACRA No. 109 of 1992; and the National Probation and Aftercare Services and the National Prisons Service to assess the circumstances of the applicant, and place reports on the record within thirty days.

5. The Deputy Registrar shall cause copies of this ruling to be availed to the applicant and the Kakamega office of Director of Public Prosecutions, National Probation and Aftercare Services and the National Prisons Service. Let the Deputy Registrar allocate a date for mention of the matter before the Judge for compliance and further directions.

PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 15TH DAY OF NOVEMBER 2021

W MUSYOKA

JUDGE