

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISCELLANEOUS CRIMINAL APPLICATION NO. E015 OF 2021

PROTUS OSANGO MURAL.....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 application herein, dated 5th March 2021, and filed herein on even date, 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 subject conviction was not in respect of mandatory sentences. The issues raised in the application are issues that he should have raised in an appeal against sentence. He does not appear to have had filed any appeal. He is way out of time. The application is incompetent and it is hereby dismissed. File to be closed.
3. The Deputy Registrar to cause copies of this ruling to be availed to the applicant and the office of the Director of Public Prosecutions.

PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 12TH DAY OF NOVEMBER 2021

W MUSYOKA

JUDGE