

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 94 OF 2019

SHADRACK SHUATANI OMWAKA.....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 Motion herein, undated, but filed herein on 22nd November 2019, 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 of robbery with violence, under section 296(2) of the Penal Code, in Mumias PMCCRC No. 1119 of 2010, and was sentenced to death, which was later commuted to life imprisonment by the President of the Republic of Kenya. It is not clear whether he appealed.

3. The offence, the subject of the instant proceedings, is not murder, but robbery with violence, as defined in section 296(2) of the Penal Code, the decision in *Francis Karioko Muruatetu & another vs. Republic [2017]* eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), therefore, does not apply to it. As a consequence, the High Court has no jurisdiction to review the sentence that was imposed by the trial court, 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). Since there is no jurisdiction on my part to entertain the Motion, I shall strike it out, for it is incompetent. The said file shall be closed.

4. The Deputy Registrar shall cause copies of this ruling to be copies availed to the applicant and the office of Director of Public Prosecutions, Kakamega.

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

W MUSYOKA

JUDGE