



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL REVISION APPLICATION NO. 8 OF 2020**

**VINCENT MUKOTSI MUKHOMBA ....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, undated, but filed herein on 6<sup>th</sup> March 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 of defilement, under sections 8(1)(3) of the Sexual Offences Act, No. 3 of 2006, in Kakamega CMCCRC No. 899 of 2009, and was sentenced to serve twenty years in prison. He filed appeals in Kakamega HCCRA No. 3 of 2015 and Kisumu CACRA No. 242 of 2011, but both the appellate courts affirmed the conviction, and confirmed the sentence.

3. The offence, the subject of the instant proceedings, is not murder, but defilement, as defined in section 8(1)(3) of the Sexual Offences Act, 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). In any case, the issues raised with regard to sentence could and should have been raised within the appeals for consideration by the appellate courts. Since there is no jurisdiction on my part to entertain the application, I shall strike it out, for it is incompetent. The said file shall be closed.

4. The Deputy Registrar to cause copies of this ruling to be availed to the petitioner and the office of the Director of Public Prosecutions.

**PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 12<sup>TH</sup> DAY OF NOVEMBER 2021**

**W MUSYOKA**

**JUDGE**