

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 108 OF 2019

FREDRICK ANZAYA EYABASI.....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 Motion herein, dated 24th August 2021, filed herein on even date, is not founded on *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), for the applicant does not seek review of sentence. He was convicted in Butere SRMCCRC No. 195 of 2016, of the offence of obtaining money by false pretences, and sentenced to serve three years' imprisonment. He has served the sentence, and he brings the current application to challenge the sentence, not along the lines of *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), but on other grounds. If he was aggrieved with sentence, he should have appealed against it, at the High Court, within the timelines given under the Criminal Procedure Code, Cap 75, Laws of Kenya. The issue cannot be revisited now, just because the complainant is threatening to sue to recover damages, or the money he lost to him, by the false pretenses.

3. The matter is incompetent and I hereby strike it out. File shall be closed. Deputy Registrar to avail copy of this ruling on the applicant and the office of Director of Public Prosecutions, Kakamega.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 10TH DAY OF DECEMBER, 2021

W MUSYOKA

JUDGE