

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

PETITION NO. 53 OF 2019

GEDION INDIRE NDEDA.....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 chamber summons herein, undated, but filed herein on 22nd May 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, in Vihiga SRMCCRC No. 420 of 2004, and was sentenced to death. Later commuted to life imprisonment. He filed an appeal at the High Court at Kakamega, being HCCRA No. 147 of 2004, which was dismissed. He says his appeal in Kisumu CACRA No. 36 of 2010 is still pending.

3. It is clear that the sentence the petitioner is serving to be revised has nothing to do with murder and review under *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ) is not available. The petition is incompetent and is hereby dismissed. File to be closed.

4. The Deputy Registrar shall cause copies this ruling to be availed to the petitioner 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