

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

PETITION NO. 39 OF 2020

JOSEPH KARANDE MAMBOLEO.....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 petition herein, undated, but filed herein on 17th November 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 an offence he does not disclose, in Butere SRMCCRC No. 277 of 2011, and was sentenced to of imprisonment for an undisclosed term. He filed an appeal at the High Court at Kakamega, being HCCRA No. 127 of 2013, whose outcome is undisclosed.

3. The pleadings herein do not disclose much in terms of the details that would assist the court in review. In any event, it is clear that the sentence the petitioner is serving 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 of 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