



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. E054 OF 2021**

**MUSTAPHA MARENJE HAJI.....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, undated, filed herein on 22<sup>nd</sup> April 2021, 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, contrary to section 296(2) of the Penal Code, Cap 63, Laws of Kenya, in Kakamega CMCCRC No. 989 of 2012, and was sentenced to death. He filed an appeal at the High Court at Kakamega, whose details he has not provided, and his sentence was reduced to thirty years' imprisonment. He now seeks a further review.

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, in view of the directions given 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). The Motion is incompetent. The file herein 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 10<sup>TH</sup> DAY OF DECEMBER, 2021**

**W MUSYOKA**

**JUDGE**