

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CORAM: D.S. MAJANJA J.

CRIMINAL APPEAL NO. 54 OF 2016

BETWEEN

ELISHA KIPTANUIAPPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of Hon.G. Adhiambo, SRM dated 12th April 2016 at Kapsabet Magistrate's Court in Criminal Case No.859 of 2015)

JUDGMENT

1. The appellant, **ELISHA KIPTANUI** was charged, convicted and sentenced to death for the offence of robbery with violence contrary to **section 296 (2)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars of the charge were that on 28th March 2015 at around 8.30pm at Kemeloi Location within Nandi County, he jointly with others not before the court while armed with offensive weapons namely pangas and arrows robbed Maurine Keya of two mobile phones and Kshs. 100,000/- all valued at Kshs. 113,000/- and immediately before or immediately after such robbery did use actual violence on the said Maurine Keya.
2. At the hearing of this appeal, he abandoned the appeal on conviction and urged the court to review the sentence. I have considered the circumstances of the offences noting that the mandatory death sentence was found unconstitutional by the Supreme Court in *Francis Karioko Muruatetu & Another v Republic SCK Pet. No. 15 OF 2015 [2017] eKLR*. The same principle was applied to the offence of robbery with violence under **section 296(2)** of the *Penal Code* by the Court of Appeal in *William Okungu Kittiny v Republic KSM CA Criminal Appeal No. 56 of 2013 [2018] eKLR*.
3. Having considered the facts of the case, I allow the appeal to the extent that I quash the sentence of death and substitute it with a sentence of **twelve (12) years** imprisonment from **3rd April 2015**.

DATED and DELIVERED at ELDORET this 25th day of April 2019.

D.S. MAJANJA

JUDGE

Appellant in person.

Ms Oduor, Prosecution Counsel, instructed by the Office of Director of Public Prosecutions for the respondent.