



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CORAM: D.S. MAJANJA J.**

**CRIMINAL APPEAL NO. 56 OF 2017**

**BETWEEN**

**THOMAS WEKESA NYONGESA.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence of Hon. M. Wambani, CM dated 19<sup>th</sup> May 2017 at Eldoret Magistrate's Court in Criminal Case No. 289 of 2012)*

**JUDGMENT**

1. The appellant, **THOMAS WEKESA NYONGESA**, 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 17<sup>th</sup> January 2012 at Langas Estate in Wareng District within Rift Valley Province jointly with others not before the court being armed with an offensive weapon namely a hammer, he robbed **PAUL NJUGUNA NJOGU** of his motorcycle make KING BIRD registration number KMCT 776F, red in colour valued at Kshs. 83,000/- and immediately before such robbery wounded the said **PAUL NJUGUNA NJOGU**.

2. At the hearing of this appeal, the appellant abandoned the appeal on conviction and submitted that he was only contesting the sentence of death imposed on him. 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. I quash the sentence of death imposed on the appellant and substitute the same with **twelve(12) years** imprisonment from 30<sup>th</sup> September, 2012.

**DATED and DELIVERED at ELDORET this 24<sup>th</sup> day of April 2019.**

**D.S. MAJANJA**

**JUDGE**

Appellant in person.

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