



**REPUBLIC OF KENYA**

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

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

**CRIMINAL APPEAL NO. 33 OF 2018**

**BETWEEN**

**AYUB KIMANI .....APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence of Hon. H. Barasa, PM dated 17<sup>th</sup> May 2018 at Eldoret Magistrate's Court in Criminal Case No. 522 of 2017)*

**JUDGMENT**

1. At the hearing of this appeal, the appellant, **AYUB KIMANI**, who had been convicted of the offence of robbery with violence contrary to **section 296(2)** of the *Penal Code (Chapter 63 of the Laws of Kenya)* conceded that he was only contesting the sentence of death imposed on him. The particulars of the charge were that on 5<sup>th</sup> February, 2017 at California Estate, with in Uasin Gishu County, jointly with others not before the Court while armed with offensive weapons namely pangas, somali swords, arrow and bows, he robbed **LEAH CHEPCHIRCHIR CHUMBA** and **HILLARY KIPKOGEI TANUI** of assorted items and immediately before the time of such robbery, threatened to use actual violence on them.

2. 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 allow the appeal to the extent of the sentence which I now substitute and sentence the appellant to **ten (10) years** imprisonment on each count to run concurrently.

**DATED and DELIVERED at ELDORET this 23<sup>rd</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.