



**REPUBLIC OF KENYA**

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

**CRIMINAL MISC. APPLICATION NO. 57 OF 2018**

**MUNUVE MWENDWA.....1<sup>ST</sup> APPLICANT**

**MUSYOKA MWENDWA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. By an application filed herein on the **11<sup>th</sup> June, 2018** the Applicants seek review of the sentence imposed following their conviction for the offence of **Robbery with Violence** contrary to **Section 29(2)** of the **Penal Code**. Their argument is that the mandatory nature of the sentence meted out is unconstitutional and therefore prejudicial to them.
2. The application arises as a result of the decision of the Supreme Court in **Francis Karioko Muruatetu & Another vs. Republic SCK Petition Number 15 of 2015 (2017) eKLR**. A decision that declared the death sentence unconstitutional and referred the matter for re-sentencing.
3. By the nature of the offence the Applicants were charged with, the Court of the first instance was the Magistrate's Court. Consequently, I hereby remit the case to the Trial Court for re-sentencing. Mention before the Chief Magistrate, Kitui on the **3<sup>rd</sup> October, 2018** for directions.
4. It is so ordered.

**Dated, Signed and Delivered at Kitui this 27<sup>th</sup> day of September, 2018.**

**L. N. MUTENDE**

**JUDGE**