

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

PETITION NO. 5 OF 2018

IN THE MATTER OF SUPREME COURT PETITION NO. 15 OF 2015

AND

IN THE MATTER OF COURT OF APPEAL NO. 109 OF 2006 – NAIROBI

AND

IN THE MATTER OF HIGH COURT CRIMINAL APPEAL NO. 181 OF 2004 – MACHAKOS

AND

IN THE MATTER OF CRIMINAL CASE NO. 301 OF 2004 AT KITUI

BETWEEN

MULATYA MUSAU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. By an application filed herein on the **11th 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 him.

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 case the Applicant was 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 **3rd October, 2018** for directions.

4. It is so ordered.

Dated, Signed and Delivered at Kitui this 27th day of September, 2018.

L. N. MUTENDE

JUDGE