

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. 6 OF 2013

(J.A MAKAU AND W. MUSYOKA JJ)

JULIUS MURIITHI M'MARANYA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The appellant was charged at the Tigania Senior Resident Magistrate's Court in Criminal Case No. 149 of 2011 of robbery with violence contrary to **section 296(2) of the Penal Code**. He was convicted on 30th January 2013 by Hon. B Ochieng, Senior Principal Magistrate, of robbery with violence and sentenced to death.
2. The particulars of the charge were that on the 1st April 2009 at Buuri Location in Tigania East District within Meru County jointly with another not before court while armed with dangerous weapons namely pangas and clubs robbed Edward Thurania of Kshs. 3000.00, and immediately before the time of such robbery cut the said Edward Thurania on his left hand and head using a panga causing grievous harm.
3. The appeal turned on the issue of sentence only. Mr Riungu for the appellant argued that in view of the decision in *Godfrey Ngotho Mutiso vs. Republic* (2010) eKLR, the sentence of death was no longer mandatory, but discretionary, and both the trial court and the appellate court had jurisdiction to consider other sentences. He invited us to do so.
4. The Court of Appeal recently pronounced itself on this matter, where a bench of five overruled the decision in *Godfrey Ngotho Mutiso vs. Republic* and held that the penalty prescribed by the law for robbery with violence is mandatory death. None of the courts have jurisdiction to award any other sentence, except of course for the exception allowed for minors by section 25(2) of the Penal Code.
5. In view of that the appeal is not merited and is hereby dismissed.

J A MAKAU

W MUSYOKA

JUDGE

JUDGE

Dated, delivered and signed on this 3rd day of December, 2013.