



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**CRIMINAL APPEAL NO. 53, 54 & 55 OF 2010**

**BOAZ ONYANGO.....1<sup>ST</sup> APPELLANT**  
**FREDRICK OSODO OMONDI.....2<sup>ND</sup> APPELLANT**  
**MARTIN OCHIENG OWORI.....3<sup>RD</sup> APPELLANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING**

The 3 appellants were charged with the offence of Robbery contrary to Section 296(2) of the Penal Code. The trial court convicted the appellants of the offence and sentenced them to death.

We confirmed the conviction in our judgment of the 4<sup>th</sup> of August, 2011. However we faulted the trial court for not giving the appellants an opportunity to arrest the death sentence and for holding that the only sentence available for the offence is the death penalty.

In mitigation to arrest the death sentence the appellants stated as follows:-

**1<sup>ST</sup> APPELLANT: Boaz Onyango.** He is remorseful, young with a bright future which should not be shattered by the death sentence. If given an opportunity he will further his education. He is 20 years old.

**2<sup>ND</sup> APPELLANT: Fredrick Osodo Omondi.** He is a first offender, remorseful, young man who needs rehabilitation. He is 27 years.

**3<sup>RD</sup> APPELLANT: Martin Ochieng Owuor.** Despite denying the offence in many words, he sought for leniency, he is married.

On its side the prosecution informed the court that there are no previous records and the appellants may be treated as first offenders.

We have considered the mitigation by the appellants. We have also taken into account the goods subject of the Robbery were valued at Kshs 2,000/=, and that the complainant received a knife stab during the robbery incident. Although the offence committed is serious and on the rise weighed against all odds, we find that the death sentence is harsh and excessive in the circumstance of the case.

The appellants are all remorseful, young and have promised to reform. We are of the considered view that they deserve a second chance in life and we shall in this regard reduce the death sentence to that of 5 years imprisonment to run from the 7<sup>th</sup> of August, 2010 being the date they were sentenced by the trial court.

**DELIVERED THIS 4<sup>TH</sup> DAY OF OCTOBER, 2011.**

**ROSELYN N. NAMBUYE**

**JUDGE**

**ALI-ARONI**

**JUDGE**

**In the presence of:**

..... **for State**

..... **present for Appellants.**