

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Revision 89 of 2006

(From the judgment of Mr. Mogambi, SRM, in Criminal Case Number 5223 of 2004 at Kericho)

REPUBLIC.....PROSECUTOR

VERSUS

WYCLIEFF OCHIENG OTIENO.....ACCUSED

ORDERS UPON REVISION

The accused in the aforesaid case was charged with two counts of robbery with violence contrary to **Section 296(2)** of the **Penal Code**. After a full trial, he was convicted and sentenced to five (5) years imprisonment. The only sentence that is prescribed under **Section 296(2)** of the **Penal Code** for any person convicted under that Section of the law is death. The trial magistrate therefore erred in law in sentencing the accused to five years imprisonment.

Consequently, in exercise of the powers conferred upon this court by **Sections 362** and **364** of the **Criminal Procedure Code**, the sentence against the accused person is now enhanced to **DEATH** as by law prescribed. A copy of this decision should be forwarded to the learned trial magistrate.

DATED at Nakuru this 27th day of October, 2006.

D. MUSINGA

JUDGE