

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL MISC. APPLICATION NO. 33 OF 2018

HAMISI ABDALAH KOMBO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. By an application filed herein on the **2nd May, 2018** the Applicant seeks review of the sentence imposed following his conviction for the offence of **Robbery with Violence** contrary to **Section 29(2)** of the **Penal Code**. His 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 offence the Applicant is 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 **11th October, 2018** for directions.

4. It is so ordered.

Dated, Signed and Delivered at Kitui this 3rd day of October 2018.

L. N. MUTENDE

JUDGE