



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL APPEALS NOS. 127 AND 128 OF 2014**

**(CONSOLIDATED)**

**BETWEEN**

**CALISTUS MUSANYI MAKOTSI.....1<sup>ST</sup> APPELLANT**

**ALEXANDER ANDOLA MAKOTSI.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The appeals herein were consolidated on 3<sup>rd</sup> March 2016. They had arisen from the conviction and sentence of the two appellants in Kakamega CMCRC No. 2430 of 2012. The appeals were canvassed before Sitati J, and a judgement was delivered 30<sup>th</sup> July 2018 dismissing them. However, the death sentence was set aside and the appellants required to mitigate before re-sentencing. The mitigation was done on 25<sup>th</sup> September 2018.

2. I have considered the record before me, together with the submissions made by the appellants as well as those made by the state. The appellants were convicted of robbery with violence contrary to section 296(2) of the Penal Code, Cap 63, Laws of Kenya. The penalty for the offence remains death, but the Supreme Court has held that the court may exercise some discretion and impose other sentences. The penalty for simple robbery as defined in section 296(1) remains a maximum of fourteen (14) years imprisonment. I note that the complainant was injured in the incident.

3. Taking all that into account, I do hereby sentence the appellants herein, Calistus Musany Makotsi and Alexander Andola Makotsi to thirty (30) years imprisonment, effective from the 28<sup>th</sup> August 2014 when the lower court convicted them.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 3<sup>RD</sup> DAY OF DECEMBER, 2018**

**W. MUSYOKA**

**JUDGE**