



IN THE COURT OF APPEAL

AT NYERI (SITTING AT NAKURU)

[CORAM: GATEMBU, SICHALE & KANTAL, JJA]

CRIMINAL APPEAL NO. 184 OF 2013

BETWEEN

DAVID KIPLANGAT RONO ALIAS RASTA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a conviction & judgment of the High Court of Kenya at Kericho (Byram Ongaya & G.W. Ngenye dated 24th October, 2013 In **Kericho HCCRA NO. 23 OF 2011**)

JUDGMENT OF THE COURT

The appellant, **DAVID KIPLANGAT RONO** also known as **RASTA** was tried and convicted of the offence of robbery with violence contrary to section 296(2) of the Penal Code. He was sentenced on **25th May, 2011** to suffer death. His first appeal to the High Court of Kenya at Kericho was dismissed in a judgment delivered on **24th October, 2013**. The appellant thereafter appealed to this Court. When the appeal came up for hearing today **Miss Kabalika**, learned counsel for the appellant urged the only ground taken in Memorandum of Appeal filed on **15th March, 2019**. The same relate to the sentence of death imposed on the appellant. According to counsel the mandatory nature of the death sentence

has since been held by the Supreme Court of Kenya to be unconstitutional and for this reason we are urged to refer the matter to the trial court for resentencing.

Mr. Baraka, learned Prosecution Counsel agrees.

We have considered the application and are aware of the new jurisprudence in this country which was pronounced by the Supreme Court in **Francis Muruatetu & Another vs. Republic** where the mandatory nature of the death sentence was held to be unconstitutional. In the event we remit the file to the High Court at Kericho with an order that the said court takes the appellant’s mitigation and award an appropriate sentence. The file be remitted to that court and be mentioned in the next fourteen (14) days for appropriate orders of that court.

Given and dated at Nakuru this 19th day of March, 2019.

S. GATEMBU KAIRU, FCIArb.

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR