

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CORAM: D.S. MAJANJA J.

CRIMINAL APPEAL NO. 164 OF 2015

BETWEEN

SOLOMON SAMBU KIRWA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of Hon. C. Obulutsa, SPM

dated 13th May 2015 at Eldoret Magistrate's Court in Criminal Case No. 5161 of 2014)

JUDGMENT

1. At the hearing of this appeal the appellant, **SOLOMON SAMBU KIRWA**, informed the Court that he was only pursuing the issue of sentence as he had been convicted and sentenced to death for the offence of robbery with violence contrary to **section 296 (2)** of the **Penal Code (Chapter 63 of the Laws of Kenya)**. The particulars of the offence were that on 31st July 2014 at Chepngoror Village in Eldoret East District within Uasin Gishu County, jointly with another person, he robbed **ABRAHAM ROTICH** of Kshs. 8,000/-, a Family Bank ATM Card and a Techno Cell phone all valued at Kshs. 13,040/- and immediately before the time of such robbery threatened to use violence against the said **ABRAHAM ROTICH**.

2. The mandatory death sentence was found unconstitutional by the Supreme Court in **Francis Karioko Muruatetu & Another v Republic SCK Pet. No. 15 OF 2015 [2017] eKLR**. The same principle was applied to the offence of robbery with violence under **section 296(2)** of the **Penal Code** by the Court of Appeal in **William Okungu Kittiny v Republic KSM CA Criminal Appeal No. 56 of 2013 [2018]eKLR**. I am therefore required to resentence the appellant afresh.

3. Having considered the circumstances of the case, I hereby affirm the conviction but quash the sentence of death and substitute it with a term of **ten (10) years** imprisonment from 4th August, 2014.

DATED and DELIVERED at ELDORET this 24th day of April 2019.

D.S. MAJANJA

JUDGE

Appellant in person.

Ms Mokuu, Prosecution Counsel, instructed by the Office of Director of Public Prosecutions for the respondent.