

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 78 "A" OF 2019

MESHACK OUMA OTEGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against Conviction and Sentence on judgment delivered

in Bondo Principal Magistrate's Court Criminal Case (SO) No. 18 of

2018 dated 13.11.2019 before Hon. E.N. Wasike – Senior Resident Magistrate.)

RULING ON DIRECTIONS

1. This appeal is before this court for directions on appeal and the appellant is present in court. However, I observe that although the appeal is ready for hearing, the trial Court proceedings were highly and fatally irregular. PW1, PW2 and PW3 were all minor witnesses. They were sworn to testify without any *voire dire* examination by the trial Court or even an indication as to whether they were minors. This is contrary to Section 19 of the Oaths and Statutory Declaration Act, Cap 15 Laws of Kenya.

2. Consequently, I find and hold that the trial of the Appellant was defective and incompetent. As the judgment of the trial court was only delivered on 13.11.2019 and this being a fairly fresh matter, I quash the conviction of the appellant and set aside the sentence imposed on him.

3. In its place, I order for retrial of the appellant before Bondo Principal Magistrate's Court for the same offence and before another Magistrate of competent jurisdiction.

4. The Appellant to be produced before Bondo Principal Magistrate's Court on 4.2.2020.

5. The trial Court file in Bondo Principal Magistrate's Court [S.O.] case No. 18 of 2018 to be resubmitted expeditiously.

6. Orders accordingly.

Dated, Signed and Delivered at Siaya this 28th day of January 2020.

R. E. ABURILI

JUDGE

In the presence of:

Appellant in person

Mr. Okachi SPPC for the Respondent\

CA: Brenda and Modestar