

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

CRIMINAL APPEAL NO. 41 OF 2016

TOM OBURA ODHIAMBO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal arising from the conviction and sentence by Hon. C. M.

Kamau, RESIDENT Magistrate in Rongo Senior Principal Magistrate's

Traffic Case No. 587 of 2014 delivered on 08/09/2016)

JUDGMENT

1. This appeal was rightly so conceded to by the State on the ground that the evidence of the sole prosecution witness was not corroborated in any material way.
2. The appellant herein, **TOM OBURA ODHIAMBO**, who was a conductor in a passenger vehicle registration number KBC 017C which plied within Kisumu-Migori road, was charged with three counts under the Traffic Act, Chapter 403 of the Laws of Kenya. The offences were acting as a conductor without official uniform, acting as a conductor without a licence and acting as a conductor without a badge. He denied the charges and one Traffic Police Officer who had arrested the appellant on the road testified as the only witness. The witness however confirmed that he was in the company of his fellow officer on the said day and time. Apart from that evidence no any other form of evidence was produced in corroboration. The appellant was however found guilty and convicted. He was sentenced to a fine of Kshs. 10,000/= on each count and in default he was to serve one moth. The sentences were to run consecutively.
3. Being dissatisfied with that decision, the appellant lodged the current appeal.
4. The role of this Court as the first appellate Court is well settled. It was held in the case of **Okemo vs. R (1977) EALR 32** and further in the Court of Appeal case of **Mark Oiruri Mose vs. R (2013)eKLR** that this Court is duty bound to revisit the evidence tendered before the trial court afresh, evaluate it, analyse it and come to its own independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanor of the witnesses and hearing them give evidence and give allowance for that.
5. In discharging the said duty, I have revisited the evidence on record and found that the same was indeed insufficient to sustain a conviction. According to **Section 124** of the **Evidence Act**, Chapter 80 of the Laws of Kenya, the evidence of a single witness must be corroborated in any material sense. That was not the case herein. The said **Section 124** states as follows: -

“124. Notwithstanding the provisions of section 19 of the Oaths and Statutory Declarations Act, where the evidence of alleged victim admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him.”

6. The only exception to the need for corroboration is in sexual offences. In this case the prosecution was to either call the other traffic officer who was with the witness or to adduce any material evidence in further support of the charges. That to a very large extent explains why police officers are always more than one when on official duties. That however did not so happen.

7. Having found so, the appeal is hence allowed, conviction on all the three counts quashed and the sentences set-aside. As the appellant is set at liberty in law unless otherwise lawfully held, the fines which he paid, if at all any, shall be accordingly reimbursed in full.

8. Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 25th day of April 2017.

A. C. MRIMA

JUDGE