



**IN THE HIGH COURT AT HOMA BAY**

**CRIMINAL APPEAL NO. 66 OF 2014**

**BETWEEN**

**STEPHEN OCHIENG OBONYO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Appeal from the original conviction and sentence in Criminal Case No. 213 of 2013 at the Chief Magistrates Court at Homa Bay, Hon. S. Ongeru, Ag PM, dated 16<sup>th</sup> April 2013)***

**JUDGMENT**

1. The appellant, **STEPHEN OCHIENG OBONYO**, was charged with five counts relating to contravention of the *Fisheries Act, (Chapter 378 of the laws of Kenya)*. The counts were as follows:

**COUNT 1** – Fishing with a prohibited net.

**COUNT 2** - Fishing in the protected fish breeding ground.

**COUNT 3** – Fishing with a vessel which is not marked for purposes of identification.

**COUNT 4** – Fishing without fisherman’s license.

**COUNT 5** – Fishing with an unlicensed vessel.

2. All the offences were committed on 14<sup>th</sup> April 2013. He was charged on 15<sup>th</sup> April 2013 and convicted on his own plea of guilty. He now appeals against the conviction and sentence.

3. I have considered the proceedings and it is clear that the same were conducted in Dholuo, a language the appellant understood. The plea was clear and unequivocal in this regard and the conviction is affirmed.

4. The appellant was sentenced on all the 5 counts to terms ranging from 6 months to 1 year imprisonment. The learned magistrate ordered that the sentences run consecutively. He also imposed fines on each count.

5. Learned counsel for the State, Mr Oluoch, concedes the appeal on the ground that the sentences of imprisonment should have run concurrently rather than consecutively.

6. I agree that the learned magistrate fell into error in light of the fact that the offences arose from the same set of facts that formed one transaction. The sentences ought to have been concurrent rather than

consecutive in the absence of a reason explained by the court. The fines, however, are not affected by this reasoning.

7. In the circumstances, I allow the appeal to the extent that the consecutive sentences are set aside and substituted with an order that the sentences run concurrently.

8. As a result, the appellant, having served the concurrent sentences, is set free unless otherwise lawfully held.

**DATED and DELIVERED at HOMA BAY this 27<sup>th</sup> day of October 2014**

**D.S. MAJANJA**

**JUDGE**

Appellant in person.

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.