

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL APPEAL NO. 34 OF 2014

BETWEEN

EDWIN OCHIENG OGADA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the original conviction and sentence in Criminal Case No. 203 of 2013 at the Chief Magistrates Court at Homa Bay, Hon. N. Kariuki, RM, dated 23rd May 2014)

RULING

1. The appellant, **EDWIN OCHIENG OGADA**, was charged with offence of stealing a motorcycle contrary to **section 278A** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars of the charge were that on 3rd March 2013 at Homa Bay Town within Homa Bay District, the appellant stole one motorcycle engine no. WCH85986CWH25879 valued at Kshs 87,000.00, the property of Fredrick Nyamori Nyangwatho. He was convicted and sentenced to 4 years imprisonment. He now appeals against the conviction and sentence.
2. The appellant faced similar charges in *Homa Bay Criminal Case No. 204 of 2014* and was convicted. He appealed against the conviction and sentence and I heard his appeal to wit; *Homa Bay Criminal Appeal No. 17 of 2014*. Having heard and determined that appeal and considering the similarity of the facts and circumstances, I think it would only be fair for the appellant to be heard by another judge.
3. In the circumstances and in the interests of justice, I set aside the proceedings of 26th November 2014 and order that the matter be transferred to the High Court at Kisii for hearing and determination. The appellant shall appear before the Deputy Registrar, High Court at Kisii on **22nd December 2014**.

DATED and DELIVERED at HOMA BAY this 15th day of December 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.