



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**CRIMINAL APPEAL NO. 25 OF 2020**

**JOSEPH OTIENO OWADE.....APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

*(From the original conviction and sentence in Criminal case No. 307 of 2020 of the Senior Resident Magistrate's Court at Mbita by Hon. J.C. Bii-Senior Resident Magistrate)*

**JUDGMENT**

1. Joseph Otieno Owade, the appellant herein, was convicted after pleading guilty to two counts. In count one the charge was being in possession of charms (paraphernalia) contrary to section 5 of the Witchcraft Act CAP. 67 Laws of Kenya while in count two the charge was pretending to exercise witchcraft contrary to section 2 of the Witchcraft Act CAP. 67 Laws of Kenya.

2. The particulars of the offence were that on the 2<sup>nd</sup> day of August, 2020 at Nyamanga village in Mbita Sub County of Homa Bay County held himself out as a witch doctor and was in possession of witchcraft paraphernalia.

3. The appellant was sentenced to serve six months in count one and one year imprisonment in count two. He has appealed against sentence which he has contended was harsh.

a) The appellant was represented by the firm of Nyauke & Company Advocates.

4. The appeal was opposed by the state though no grounds were filed.

5. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs. Republic [1972] EA 32**.

6. Section 5 of the Witchcraft Act Provides:

**Any person who is in possession of a charm or other article usually used in the exercise of witchcraft, sorcery or enchantment for the purpose of causing fear, annoyance or injury to another in mind, person or property, and who fails to show reasonable cause why he should retain any such charm or other article in his possession, shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand shillings, or to both such imprisonment and fine, and the charm or other article shall be forfeited and destroyed or otherwise dealt with in such a way as the magistrate may direct.**

7. Section 2 of the Witchcraft Act Provides:

**Any person who holds himself out as a witchdoctor able to cause fear, annoyance or injury to another in mind, person or property, or who pretends to exercise any kind of supernatural power, witchcraft, sorcery or enchantment calculated to cause such fear, annoyance or injury, shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.**

8. The sentence cannot be said to be excessive or harsh I find that the appeal lacks merit and the same is dismissed.

**DELIVERED AND SIGNED AT HOMA BAY THIS 8TH DAY OF JUNE, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**