



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL APPEAL NO. 57 OF 2019

[CONSOLIDATED WITH HCCRA NO. 58/2019 AND HCCRA 59/2019]

(CORAM: R. E. ABURILI - J.)

STEPHEN OKOTH AHINDU.....1ST APPELLANT

MORRIS ODHIAMBO AHINDU.....2ND APPELLANT

THADAYO AHINDU AHINDU.....3RD APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal against conviction and sentence in Criminal Case No. 1055 of 2018 in the Principal Magistrate's Court, Bondo dated 22.7.2019 before Hon. E.N. Wasike, Senior Resident Magistrate)

JUDGMENT

1. Upon considering the proceedings and evidence adduced before Hon. E.N. Wasike, SRM Bondo, I note that the court did not indicate the language in which the witnesses and or even the accused person testified. This is contrary to **Sections 197 and 198 of the Criminal Procedure Code** and **Article 50(2)(m) of the Constitution** which guarantees the accused person the right to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial.
2. Those are fundamental substantive statutory and constitutional provisions. The trial court record shows interpretation as English / Swahili / Dholuo but it is not indicated which of the 3 languages were used by any of the witnesses or the accused.
3. For the above reasons, I find and hold that the trial of the accused person was fatally defective. The conviction is quashed and sentence set aside for retrial of the accused persons for the same offence before Bondo PM's court.
4. Mention on 13/3/2020 before Bondo Principal Magistrate's for further directions. Appellants remanded in custody until then and until further directions of the court.

Dated, signed and delivered at Siaya, this 3rd day of March, 2020.

R.E. ABURILI

JUDGE

In the presence of:

Appellant in person

Mr. Okachi, SPPC for State

Court Assistants: Ishmael Orwa and Modestar Mutiemani