

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NOS. 39,41 &42 CONSOLIDATED OF 2019

KENNEDY OCHIENG OKUKU.....1ST APPELLANT

BENJAMIN MOSES OTIENO.....2ND APPELLANT

JOSEPH OWINO OMOLO.....3RD APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from the conviction and sentence in judgment dated 8.3.2018 delivered

at Bondo Law Courts vide Criminal Case [S.O]. No. 7 of 2019 before Hon. S.W. MATHENGE – RESIDENT MAGISTRATE)

JUDGMENT VIA SKYPE

1. I have perused the Trial Court record and the appeal herein. I observe that the trial of the Appellants was defective as the language in which the witnesses testified is not disclosed. It is also not clear which language the Accused persons/Appellants understood during the trial.
2. Failure to indicate the specific language which the Appellants understood for trial purposes vitiates the trial as the failure offends substantive provisions of Section 197 and 198 of the Criminal Procedure Code as read with Article 50(2)(m) of the Constitution, considering the serious offence with which the accused/appellants herein faced.
3. Accordingly, I quash the Appellant's Conviction and vacate the sentence imposed by Hon. S.W. Mathenge, Resident Magistrate and Order that the Appellants shall be retried at Bondo Law Courts for the same offence in compliance with the law.
4. Orders accordingly.

Dated, Signed and Delivered at Siaya this 5th day of May, 2020 via skype due to covid 19 situation.

R.E. ABURILI

JUDGE