

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

CRIMINAL APPEAL NO. 13 OF 2018

KENNEDY ODHIAMBO SEWE alias OWINO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal arising from the conviction and sentence by Hon. M. M. Wachira,

Resident Magistrate in Migori Senior Resident Magistrate's

Criminal Case No. 452 of 2016 delivered on 11/12/2017)

JUDGMENT

1. As I was writing the judgment in this appeal I realized that I previously handled **Migori Criminal Appeal No. 6 of 2018 Ferdinand Okoth Kagera vs. Republic** where the Appellant therein had been jointly charged with the Appellant herein with *inter alia* the offence of **Stealing Goods on Transit** contrary to **Section 279(c)** of the **Penal Code**. I disallowed the appeal on 30/04/2018 and this current appeal was filed on 02/05/2018. Whereas Ferdinand Okoth Kagera was the Turn-Boy, the Appellant herein, **Kennedy Odhialo Sewe alias Owino** was the driver of the subject vehicle.

2. Having already expressed my legal mind on the facts and the law in the circumstances of this matter and the Appellant herein having not opted to have the matter heard by another Judge in another station (this being a Single-Judge station) I can but only reiterate what I stated in the judgment in **Migori Criminal Appeal No. 6 of 2018 Ferdinand Okoth Kagera vs. Republic**. In reaching that decision I have carefully gone through the proceedings and considered the unsworn defense of the Appellant herein which I do not find it credible enough to create any reasonable doubts on the prosecution's case.

3. On sentence, the Appellant being the driver of the vehicle had the greatest responsibility and duty of care on the goods. Indeed he ought to have been sentenced to stiffer penalty but since no appeal was lodged against sentence and the matter was not raised on appeal, I rest the issue thereat.

4. I therefore disallow this appeal in its entirety. The Deputy Registrar shall ensure that a copy of the judgment in **Migori Criminal Appeal No. 6 of 2018 Ferdinand Okoth Kagera vs. Republic** is annexed to this judgment for the completeness of record.

5. Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 14th day of February 2019.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Kennedy Odhialo Sewe alias Owino Appellant in person.

Mr. Kimanthi, Senior Principal Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Evelyn Nyauke – Court Assistant