

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 69 OF 2017

JEREMIAH OMBASA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. N. Wairimu – PM dated 15th August, 2017 at the Principal Magistrate’s Court at Ogembo in Traffic Case No. 49 of 2011)

JUDGMENT

The State concedes that the trial magistrate did not comply with the provisions of Section 200 of the Criminal Procedure Code (Chapter 75 of the Laws of Kenya) when she took over conduct of the matter from the previous magistrate who had taken the evidence of 6 witnesses.

Accordingly, the conviction and sentence of the appellant, JEREMIAH OMBASA for the offence of causing death by dangerous driving contrary to section 46 of the Traffic Act is hereby quashed.

In view of the overwhelming evidence against him, I order a re-trial. The appellant shall remain in custody and shall be taken to the Magistrate’s Court at Ogembo on 10th July 2018 to plead afresh to the charges.

Dated and delivered at Kisii this 5th day of July 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Prosecution Counsel, instructed by Office of Director of Prosecutions.

Mr. Abobo, Advocate for the Appellant.