

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

HCCRA NO. 32 OF 2013

BETWEEN

MUSA OCHIENG' ODERA APPELLANT

AND

REPUBLIC.....RESPONDENT

*(Appeal arising from the original conviction and sentence in Homa Bay CM'S CR. NO. 213 OF 2013
by Hon. S. Ongeru, Ag PM dated 16th April 2013)*

JUDGMENT

The appellant, MUSA OCHIENG ODERA, was charged with five counts relating to contravention of the Fisheries Act, (**chapter 378 of the laws of Kenya**). The counts were as follows:

COUNT 1 – Fishing with a Prohibited Net

COUNT 2 - Fishing in the protected Fish Breeding ground

COUNT 3 – Fishing with a vessel which is not marked for purposes of identification

COUNT 4 – Fishing without Fisheries license.

COUNT 5 – Fishing with an unlicensed vessel.

All the offences occurred on 14th April, 2013. He was charged on 15th April, 2013 and convicted on his own plea of guilty. He appeals against the conviction and sentence.

I have considered the proceedings and it is clear that the same were conducted in Dholuo Language, a language the appellant understands. The plea was clear and unequivocal in this regard.

He was sentenced on all the counts for terms ranging from 6 months to one year and fined. The learned magistrate directed that the sentences run consecutively. Unfortunately, the learned magistrate fell in error in light of the fact that the offences arose from the same set of facts that formed one transaction. The sentence ought to have been concurrent rather than consecutive.

In the circumstances, I allow the appeal to the extent that the consecutive sentences are set aside and substituted with an order that the sentences run concurrently. As a result, the appellant is set free unless otherwise lawfully held.

DATED and DELIVERED at HOMABAY this 10th DAY OF JUNE 2014

D.S. MAJANJA

JUDGE