



**Otieno v Republic (Criminal Appeal 213 of 2019)  
[2024] KECA 394 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KECA 394 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL 213 OF 2019  
HM OKWENGU, HA OMONDI & JM NGUGI, JJA  
APRIL 18, 2024**

**BETWEEN**

**MARCELLA NYABONYI OTIENO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An Appeal from the Judgment of the High Court of Kenya at Kisii (E.N. Maina & S. Okongo, JJ) Dated 30th December, 2013 in Kisii HC. Criminal Case No. 7 of 2012)*

**JUDGMENT**

1. The appellant Marcella Nyabonyi Otieno was convicted by the Senior Resident Magistrate's Court at Keroka and sentenced to life imprisonment for the offence of Robbery with violence contrary to section 295 as read with section 296(2) of the [Penal Code](#).
2. Being aggrieved by the judgment of the trial court, she lodged an appeal in the High Court against conviction and sentence, which appeal was heard by a bench of two Judges (E. Maina & S. Okong'o, JJ.). The appeal was dismissed in its entirety.
3. The appellant is now before us in a second appeal. However, it is within our knowledge that S. Okong'o, J, is a Judge in the Land and Environment Court (ELC) which is a specialized court dealing with land and environment matters. In accordance with the decision of the Supreme Court in [Republic v Karisa Chengo & 2 others](#) [2017] eKLR, the learned Judge had no jurisdiction to deal with the appellant's first appeal it being a criminal appeal which is the preserve of the High Court.
4. In the circumstances, the judgment and proceedings in the High Court relating to the appellant's first appeal were a nullity. We therefore hereby remit the matter back to the High Court for rehearing of the appeal before a Judge of the High Court with appropriate jurisdiction.



5. The appellant shall appear before the Deputy Registrar of the High Court in Kisii within two (2) weeks from today for a hearing date on the first appeal to be fixed on priority.

**DATED AND DELIVERED AT KISII THIS 18<sup>TH</sup> DAY OF APRIL, 2024.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**H.A. OMONDI**

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**JUDGE OF APPEAL**

**JOEL NGUGI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

Deputy Registrar

