



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 156 OF 2012**

*(From Original Conviction and Sentence in Criminal Case No. 1120 of 2011 of the Principal Magistrate's Court at Kwale: A.O. Aminga – R.M.)*

ATHUMAN MOHAMED MANUVE ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

**JUDGMENT**

The Appellant in this appeal who was represented by **MR. GICHANA** Advocate filed an appeal against his conviction and sentence by the learned Resident Magistrate sitting at Kwale Law Courts. The Appellant had been tried and convicted for the offence of **CREATING A DISTURBANCE contrary to SECTION 95(1) OF THE PENAL CODE**. Upon conviction the accused whom the court found to be mentally unstable was sentenced to serve at the Presidents pleasure.

**MR DZUMO** learned State Counsel conceded the appeal. I do agree with the concession of the learned State Counsel. The offence of creating a disturbance is a misdemeanour which did not call for a custodial sentence. The trial magistrate himself noted that the Appellant appeared not to understand the proceedings. In such circumstances the court ought not to have rendered a conviction. It is clear that the Appellant who believes he is bewitched is more in need of psychiatric attention. He has been in custody since May 2012 well over 1 ½ years which is more than sufficient. I therefore allow this appeal. The Appellant is to be set at liberty unless otherwise lawfully held.

**Dated and Delivered in Mombasa this 19<sup>th</sup> day of February 2014.**

**M. ODERO**

**JUDGE**