



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**Criminal Appeal 1 of 2008**

**HARWARD ENJAGA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

I have considered the appeal and the concessions by the Republic.

It is clear that there is confusion on the record. The Coram shows that the sitting Magistrate was Hon. A. Muchelule, the Chief Magistrate. The facts in the typed proceedings appear to have been read before and recorded by Hon. Muchelule. However, curiously, the Judgment is signed by Hon. Maisiba Resident Magistrate. How did this happen? When did the matter go before Hon. Maisiba? This Court is a Court of record. It cannot assume anything. This Court does not purport to know the handwriting and signatures of Hon. Muchelule and Hon. Maisiba. As Appellate Court, I will rely on the record of appeal.

The proceedings and Judgment are a nullity ab initio. As a result, this is a case of mistrial. The entire trial was invalid.

On this ground I do not have to go into any other ground. I do hereby therefore allow the appeal. I do hereby set aside and quash the conviction and sentence. I do order that the Appellant be released from custody forthwith unless otherwise lawfully held.

**DATED AND DELIVERED AT ELDORET ON THIS 15<sup>TH</sup> DAY OF JANUARY, 2009.**

**M. K. IBRAHIM**

**JUDGE**

**In the presence of:**

Mr. Chirchir for the State

Appellant in person