



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**Criminal Appeal 138, 139 & 140 of 2007**

MUSIA MUTUNGI ..... 1<sup>ST</sup> APPELLANT  
KIMANTHI MUTHAMA ..... 2<sup>ND</sup> APPELLANT  
KYALO MAWEU ..... 3<sup>RD</sup> APPELLANT

**VERSUS**

REPUBLIC ..... RESPONDENT

*(Appeal from a Judgment of the Resident Magistrate's Court at Kilungu (Hon. P.M. Kariuki RM)  
dated 11<sup>th</sup> July 2007)*

**in**

**(RM'S CR.C. No. 84 of 2006)**

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**JUDGMENT**

1. The Appellants were all charged with the offence of defilement contrary to Section 145 (1) of the Penal Code.
2. Upon trial, the three were convicted and sentenced to serve 15 years in prison each.
3. I have now read the judgment. It is not a judgment as it contravenes Section 169 of the Criminal Procedure Code.
4. Since there is no objection; **H.C.Cr.Appeals Nos. 138, 139 and 140/2007** are all consolidated and for the above reason only are allowed. The convictions are quashed, sentences set aside.
5. The Appellants shall however be retried at Kilungu SRM'S Court. Mention on **16/11/2009** before Kilungu SRM's Court.
6. Orders accordingly.

Dated and delivered at Machakos this **12<sup>th</sup>** day of **November** 2009.

**ISAAC LENAOLA**

**JUDGE**