

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 93 of 2002

VENANZIO NYAGA RIUNGU.....APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The State Counsel Mr. Kimathi has conceded this appeal on the ground it was prosecuted by a sergeant, under Section 85 CPC a person not qualified. He submits that the appellant has been in custody for a long period. He was arrested on 2/1/2002 and the trial ended on 11/9/2002. After conviction and sentence for 5 years imprisonment on one count and 8 months imprisonment for second count. He served sentence for 2 ½ years before. The state applies for a Retrial on the ground that there is overwhelming evidence against the appellant and if trial was held a conviction could be achieved. The counsel for the appellant objects to an order for retrial granted. This charge has been hanging on his head todate. It is clear that the appellant has served all sentences on count 2 and substantial part of sentence in count one.

It is my view that subjecting him to further trial would be unjust. It is not his fault that the trial resulted in a nullity. There is no assurance that the witnesses who gave evidence in the lower court can be easily found thus delay in a retrial. Justice demands that the Appellant be released at this stage. The state conceding the appeal the same is allowed. I do not see any reason to order a retrial.

The appellant shall be released forthwith unless otherwise lawfully held.

Dated this 20th February, 2008.

J. N. KHAMINWA

JUDGE