

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 67 OF 2008

(Arising from CMCR. Case No. 3933 of 2007 of the Chief Magistrate's Court at Mombasa)

NURI KALUME NURIAPPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

I have considered the arguments from both the learned State Counsel and Mr. Lewa, learned defence Counsel. I have also perused the record of appeal and I am convinced that this is a case fit to go for retrial. The appellant has only served five of the 15 months sentence imposed. No prejudice will be visited upon the appellant. In the end I allow the appeal by quashing the conviction and setting aside sentence. I however direct that the appellant be taken before the Chief Magistrate today (26.5.08) for fresh plea and that the retrial be undertaken by another magistrate of competent jurisdiction other than Mr. Kirui.

Delivered and dated at Mombasa this 26th day of May 2008.

J. K. SERGON

J U D G E

In the presence of Monda for Respondent.

And Mr. Lewa for Appellant.