



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KAKAMEGA

Criminal Appeal 157 of 2005

(Appeal against conviction and sentence of the MS. P. K. SULATAN, SRM in Mumias

Senior Resident Magistrate Court in Criminal Case No.698 of 2005)

ABDALLAH KWEYU NGUYE .....APPELLANT

V E R S U S

REPUBLIC .....RESPONDENT

J U D G M E N T

The Appellant, Abdallah Kweyu Mbuye was convicted on 11.11.05 by the Senior Resident Magistrate, P. K. Sultan in Mumias Criminal Case No. 698 of 2005 of interfering with boundary features contrary to section “**24 of the Land Registration Act, Cap 300**” of the Laws of Kenya and sentenced to thirty days imprisonment. He appealed against conviction and sentence and put forward four grounds in which, in a nutshell, he attacked the evidence adduced against him and contended that the offence was not proved.

I have perused the record of the trial court. Firstly, the statute quoted namely “**the Land Registration Act**” does not exist. Chapter 300 of the Laws of Kenya relates to the Registered Land Act and not the “**Land Registration Act.**” The offence was premised on a non-existent statute. Secondly, there was no evidence to establish the boundary features and without it, interference could not be proved. Thirdly, the investigating officer was not called as a witness. Fourthly, the trial court shifted the burden of proof to the Appellant.

The Learned State Counsel acted correctly in conceding the appeal.

The conviction is hereby quashed and the sentence set aside.

***Dated, signed and delivered at Kakamega this 17<sup>th</sup> day of February, 2006.***

G. B. M. KARIUKI

J U D G E