

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

Revision 1 of 2006

PETER

MACHARIA.....APPLICANT

VS

REPUBLIC.....PROSECUTOR

REVISION

I have been asked to declare that proceedings before the trial Magistrate on 26th January 2006 were a nullity as the same was done by a police prosecutor.

In this regard, I have been referred by counsel to Section 54 and 64 of the Weights and Measures Act (Cap 513) Laws of Kenya.

Section 54 provides:

1 *“The minister may from time to time for the purposes of this Act, appoint inspectors from among persons holding certificates of qualification for the efficient discharge of the functions conferred or imposed upon them by this Act.*

2 *Notice of person’s appointment to or ceasing to hold office under this Act shall be given by the Minister in the Gazette.*

3 *A certificate of appointment signed by the Director shall be issued to every inspector appointed and shall be evidence of his appointment under this Act*

4 *Any person who, immediately before the commencement of this Act, was an inspector appointed under Section 27 of the weights and Measures Act (now repealed), shall be deemed for the purposes of this Act to be an inspector appointed under this section.”*

Section 64 provides:

“All offences under this Act may be prosecuted by an inspector.”

In my view, section 64 is permissive. Prosecution can be done by an inspector appointed under Section 54 of the Act as well as a police prosecutor. The operative word is may. Accordingly this ground of revision fails. The penalty provided for is a fine of not exceeding Ksh.20,000/= or to imprisonment for a term not exceeding three years. The learned SPM merely sentenced the accused to serve 3 months. That sentence appears lenient. However, taking into account the family obligations of the accused as canvassed at the hearing, I substitute the custodial sentence with a fine of Ksh.20,000/=. In default, the accused to serve the sentence of 3 months imprisonment on each count. The sentences to run concurrently. Right of Appeal within 14 days.

Dated at Bungoma this 14th day of February 2006.

N.R.O. OMBIJA

JUDGE