



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Appeal 232 Of 2004

CATHERINE MWEBI ..... APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

JUDGMENT

The Appellant in this appeal **Catherine Mwebi** was charged with the offence of **malicious damage to property** contrary to **Section 339(1) of the Penal Code**.

The particulars of the offence are that on 23<sup>rd</sup> day of February 2003 at Kapsita Farm Molo in Nakuru District willfully and unlawfully damaged the fence valued at Kshs.3,100/- the property of Peter Mogaka.

After a full trial the Appellant was convicted by the Senior Resident Magistrate Molo and committed to 12 months probation. The Appellant being dissatisfied with the conviction and sentence has appealed to this court.

During the hearing, the learned Assistant Deputy Public Prosecutor, Mr Gumo concluded that the prosecutor who conducted the trial P.C. Njagi was unqualified and thus the proceedings before the trial court are a nullity.

As required of this court, I have carefully reconsidered the record of proceedings before the trial court. It is clear that the matter was concluded by the said Police Constable Njagi. The **Criminal Procedure Code** clearly specifies that a prosecutor should not be by an officer below the rank of an Assistance Inspector of Police.

There are numerous decisions in this regard by the Court of Appeal and I wish to refer to the case of **Elirema & Another -Vs- Republic 2003 KLR** where the issue was dealt with to finality.

Accordingly I hereby quash the conviction and sentence and allow the Appeal.

**Judgment read and signed and dated on 17<sup>th</sup> March 2006.**

**MARTHA KOOME**

JUDGE