



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**

**Criminal Appeal 7 of 2005**

**GEORGE KAROMO MUCHIRI.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

Upon reading the record and upon hearing submissions of Appellants counsel, I find that there was no criminal action in this case by the accused. The matter was purely civil and in fact no fraud was practiced by the accused. It was a contract arrangement about leasing of land by accused to the complainant. The appellant put the complainant into possession after payment and that was all a lessor is expected to do. It appears the complainant was in dispute with a third party. In the case of lessor and lessee a contract of lease is always with a clause of warranty for the non interference with peaceful occupation or enjoyment of the leased premises by the lessor or any person claiming lawfully under him. No guarantee that the lessee will not be interrupted by unlawful action of third parties.

All the same the State Counsel has conceded this appeal on same grounds and therefore I find the Trial Magistrate was wrong in convicting the appellant in circumstances.

I allow the appeal and quash conviction and set aside the sentence. The appellant shall be set at liberty forthwith unless otherwise lawfully held.

Dated this 14<sup>th</sup> March, 2006

**J.N. KHAMINWA**

**JUDGE**