

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Criminal Appeal 128 of 2003

IBRAHIM NDERITU GICHOVI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original sentence and conviction of Kerugoya Principal Magistrate's Court in Criminal Case Number 138 of 2003 by J. N. Onyiego – R. M.)

J U D G M E N T

Ibrahim Nderitu Gichovi, the Appellant herein was tried and convicted by the Resident Magistrate Kerugoya for the offence of Assault causing actual bodily harm contrary to Section 251 of the Penal Code and another offence of malicious damage to property contrary to Section 339 (1) of the Penal Code. He was sentenced to serve 2 years imprisonment on each count.

Being dissatisfied the Appellant brought this appeal contending *inter alia* that the prosecution evidence was contradictory and insufficient to sustain a conviction and that the sentence imposed upon him was excessive.

Learned Principal State Counsel Mr. Orinda has conceded this appeal accepting that the prosecution was conducted by incompetent persons. He also concedes that the prosecution evidence was hazy and would not justify an order for a retrial.

I have considered the record of proceedings of the Lower Court. It is evident that the prosecution of the Appellant was conducted by Cpl. Munguti and P.C. Mwangi, persons who were not competent to prosecute as provided under Section 85 (2) of the Criminal Procedure Code. The Appellant's trial was therefore a nullity and his conviction cannot stand.

Since the State is not pursuing an order for a retrial, I allow this appeal, quash the convictions and set aside the sentence imposed. The Appellant shall be set free unless otherwise lawfully held.

Dated, signed and delivered this 29th day of May 2006.

H. M. OKWENGU

JUDGE