

REPUBLIC OF KENYA

JOHN KINGORI WACHIRA (Alias MANGA).....
APPELLANT
VERSUS
REPUBLICRESPONDENT

CRIMINAL APPEAL NO. 62 of 2006

JOHN MAINA MWANGI (Alias BLAKIE)
.....APPELLANT
VERSUS
REPUBLICRESPONDENT

**(An appeal from the Judgment of C.D. Nyamweya, Senior Resident Magistrate, undated;
In
Criminal Case No. 423 of 2003 of the Chief Magistrate’s Court , Nyeri.)**

JUDGMENT

The Provincial State Counsel Mr. Charles Orinda, conceded these consolidated appeals on the ground that the prosecutor at the trial was not a person qualified to prosecute under Section 85(2) of the Criminal Procedure Code. We note also that the evidence recorded by the learned trial Magistrate does not show that witnesses were being sworn before they gave evidence . In the circumstances, we have to give the benefit of the doubt to the appellants.

That being the position, we do hereby declare the trial a nullity. Allow the appeal of each appellant . Quash the conviction of each appellant and set aside the sentence imposed thereof.

We order that each appellant be set at liberty forthwith unless lawfully detained in some other cause.

Dated this 28th day of September, 2006.

J.M.KHAMONI

JUDGE

H.M.OKWENGU

JUDGE