



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Criminal Appeal 379 of 2003**

**JOHN NJOROGI GITAU
.....APPELLANT**

VERSUS

**REPUBLIC
.....RESPONDENT**

CRIMINAL APPEAL NO. 381 OF 2003

**PETER MAINA GACHOYA
.....APPELLANT**

VERSUS

**REPUBLIC
.....RESPONDENT**

**(An appeal from the Judgment of C.D. Nyamweya , Senior Resident Magistrate, dated
30th September, 2003;**

In

Criminal Case No. 1107 of 2003 of the Chief Magistrate’s Court, Nyeri.)

JUDGMENT

The learned Provincial State Counsel Mr. Charles Orinda, concedes these appeals on the ground that the prosecutor was not qualified in terms of Section 85(2) of the Criminal Procedure Code. The State Counsel does not ask for retrial.

There is also the fact that the record made by the learned trial Magistrate during the trial does not show that witnesses were being sworn before they gave evidence and in the circumstances we have to assume that witnesses were not being sworn and that the evidence on record was not taken in accordance with the law.

The above being the position, we do hereby declare the trial of the appellants a nullity. Allow the appeal of each appellant. Quash the conviction of each appellant and set aside the sentence imposed. **Each appellant shall be released forthwith unless lawfully detained in some other cause.**

Dated this 26th day of September, 2006.

J.M.KHAMONI

JUDGE

H.M. OKWENGU

JUDGE