

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Criminal Appeal 114 of 2003

(From original conviction and sentence in Criminal Case Number 219 of 2000 in the

District Magistrate's Court at Mukurwe-ini by P. K. Kariuki – D.M. 1)

DANIEL GITHAIGA MWANIKI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Daniel Githaiga Mwaniki hereinafter referred to as the appellant was tried and convicted by the District Magistrate Mukurwe-ini for the offence of assault causing actual bodily harm contrary to *section 251* of the Penal Code. He was sentenced to pay a fine of Kshs.3,000/= in default to serve 3 months imprisonment.

Being dissatisfied with his conviction, he brought this appeal urging the court to quash his conviction and set aside his sentence. Learned State Counsel Mr. Mugwe has conceded this appeal on the grounds that the proceedings were a nullity due to the participation of Sergeant Ngao.

I have perused the proceedings of the lower court and have confirmed that the case in the lower court was prosecuted by one Sergeant Ngao a person who was not competent under *section 85 (2)* of the Criminal Procedure Code to prosecute the case.

In the circumstances the appellant's conviction cannot stand. His appeal is accordingly allowed, conviction quashed and sentence set aside. The fine if paid should be refunded to the appellant.

Dated, signed and delivered this 24th day of November 2006.

H. M. OKWENGU

JUDGE