

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 277 of 1996

(From original conviction and sentence in Criminal Case Number 338 of 1995 in the District Magistrate's Court at Kandara by Mr. J. S. Kamuru D.M. I dated 18th June 1996)

JOSEPH KARIUKI WANYOIKE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Joseph Kariuki Wanyoike hereinafter referred to as the appellant was tried and convicted by the District Magistrate Kandara 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.1,500/= in default to serve 2 months imprisonment.

Being dissatisfied with his conviction and sentence He filed this appeal through the firm of M/s Njenga Mbugua & Company Advocates. At the hearing of this appeal the said Advocates though duly served did not attend court for hearing.

Learned State Counsel Mr. Mugwe has indicated to this court that he is conceding the appeal as the prosecution of the case was conducted by one Cpl. Namu.

I have perused the proceedings of the lower court and do confirm that that was the position. Cpl. Namu not being a person who is competent to prosecute criminal cases under *section 85 (2)* of the Criminal Procedure Code his participation in the trial rendered the proceedings a nullity.

In the circumstances I do concur with the learned State Counsel that this appeal must succeed . It 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