



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL APPEAL 211 OF 2003**

**TIRUS MURIUKI KAMIRU.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**TIRUS MURIUKI KAMIRU** was convicted for **HOUSE BREAKING** contrary to section 304(1), and **STEALING** contrary to section 279(b) of the Penal Code. The learned trial magistrate then sentenced him to 4 years imprisonment, with one stroke of the cane.

Being aggrieved, the appellant lodged this appeal against both conviction and sentence.

When the appeal came up for hearing, the Learned State Counsel, Mr. Olengo, notified the court that he was conceding the appeal. He did so because part of the proceedings were conducted by an unqualified Public Prosecutor.

I have perused the record of the proceedings before the lower court, and noted that PC Marubu did conduct the proceedings on 21st January 2003. He was not qualified to do so. I say so, not because PC Marubu was incompetent, but because he did not hold the requisite qualification for appointment as a Public Prosecutor.

By virtue of Section 85(2) of the Criminal Procedure Code, for a police officer to qualify for appointment as a public prosecutor, he had to have at least the rank of an Assistant Inspector. Therefore, as PC Marubu's rank was well below the minimum requirement, he did not qualify to be appointed a public prosecutor.

Having carried out a role which is the sole preserve of persons properly appointed as public prosecutors, PC Marubu's actions rendered the entire trial a nullity. I make that declaration on the basis of guidance which I have obtained from the Court of Appeal's Judgment in **ROY RICHARD ELIREMA & ANOTHER V REPUBLIC, CRIMINAL APPEAL NO. 67 OF 2002** (At Mombasa).

Consequently, the appellant's conviction herein is quashed, and the sentence is set aside. The appellant should now be set at liberty, unless he is otherwise lawfully held.

Dated at Nairobi this 24th day of January 2005

**FRED A. OCHIENG**

**JUDGE**

Mr. Odera Court Clerk