



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Criminal Appeal 36 of 2003**

**STEPHEN GITAU MACHARIA.....APPELLANT**

**Versus**

**REPUBLIC.....RESPONDENT**

*(Being Appeal Against judgment by G. K. Mwaura, Senior Resident Magistrate, in the Senior  
Principal Magistrate's Court at Muranga in Criminal Case No. 1544 of 2001)*

**JUDGMENT**

This appeal went through a full hearing but as I sit down to write this judgment I discover that Police Constable Machuki conducted a substantial part of the trial. He was not a prosecutor qualified in terms of *Section 85(2)* of the Criminal Procedure Code.

I do not therefore find it necessary to go into what was said during the hearing of this appeal as I find that the trial of the Appellant was a nullity.

Accordingly, I do hereby allow this appeal. Quash the conviction of the Appellant and set aside the sentence imposed upon him. He be released forthwith unless lawfully detained in some other cause.

Dated this 28<sup>th</sup> day of February 2005.

**J. M. KHAMONI**

**JUDGE**