

IN THE HIGH COURT OF KENYA AT BUNGOMA

Criminal Appeal 131 of 2001

Arising from Webuye SRM Cr. Case No. 29 of 2001

JOSEPH WANJALA KHAOYA.....APPLICANT

VS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was convicted for the offence of stealing by servant contrary to section 281 of the Penal Code. He was then sentenced to pay a fine of Ksh. 30,000 or in default to serve 1 year imprisonment.

On appeal, Mr. Khakula who appeared for the appellant only argued one ground of appeal that is that the prosecution before the trial court was conducted by an unauthorized prosecutor. Mr. Onderi, the learned senior state counsel conceded the appeal on the same ground.

The record of appeal reveals that the prosecution before the trial court was represented by one corporal Nyongesa. The law under S. 85 (2) of the criminal procedure code does not permit police officers below the rank of an inspector to be appointed to prosecute criminal cases on behalf of the A.G. hence the proceedings before the trial court were a nullity and incapable of being used to sustain a conviction.

The upshot therefore is that the appeal succeeds with a resultant order that the conviction is quashed and the sentence is set aside. The fine if paid should be refunded forthwith.

DATED AND DELIVERED THIS 25th DAY OF February 2005

J.K. SERGON

JUDGE