

IN THE REPUBLIC OF KENYA AT BUNGOMA

Criminal Appeal 126 of 2003

Arising from Webuye Criminal SRM case No. 520 of 2003

SULEIMAN KOBI MACHIO.....APPELLANT

VS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant, Suleiman Kobi Machio and 3 others faced a charge of Hardware breaking and committing a felony contrary to section 306 (a) of the penal code. He was then convicted and sentenced to serve 1 year under probation. He filed a petition of appeal containing 5 grounds of appeal.

When this appeal came up for hearing the senior state counsel pointed out that he was conceding to the appeal on a technical ground which was not raised on the appellant's petition. He urged this court to allow this appeal on the ground that the proceedings before the trial court were a nullity by virtue of the fact that the prosecution's case was conducted by an unauthorized prosecutor. I have perused the record of appeal and I am satisfied that the prosecution of the appellant was partly conducted by one corporal Nyongesa who was obviously not allowed to prosecute under section 85(2) of the criminal procedure code. The whole proceedings therefore became a nullity. I am satisfied the learned senior state counsel properly conceded to this appeal.

The end result is that the appeal is allowed with a consequential that the conviction is quashed and the sentence set aside.

DATED AND DELIVERED THIS 25th .DAY OF February 2005

J.K. SERGON

JUDGE