



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**CRIMINAL APPEAL NO. 121 OF 2003**

**JAMES EKIRU ::::::::::::::::::::::::::::::::::::::: APPELLANT.**

**VERSUS**

**REPUBLIC :::::::::::::::::::::::::::::::::::::::RESPONDENT.**

**(Being an appeal from original conviction and sentence of H.M. Wandere – Resident Magistrate in R.M’s Criminal Case No. 361 of 2003, Kapenguria)**

**JUDGMENT**

The appeal is conceded by the prosecution. Other than for the fact that an unqualified prosecutor appeared before the subordinate court, the learned state counsel concedes that the conviction was largely based on hearsay evidence. Such evidence ought not to have been relied upon to support the conviction. I therefore agree with the learned state counsel that the conviction herein is not safe.

I accordingly allow the appeal, quash the conviction and set aside the sentence and order that the appellant be and is hereby set to liberty unless otherwise lawfully held.

**WANJIRU KARANJA.**

**AG. JUDGE.**

**27/4/2005.**