



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**CRIMINAL APPEAL NO.179 OF 1999**

(Appeal from the original conviction and sentence in Criminal Case Number 11 of 1996  
by Ndungu H. N. Senior Resident Magistrate at Kangema.)

KAMAU MWANGI.....APPELLANT  
VERSUS  
REPUBLIC.....RESPONDENT

**J U D G M E N T**

Kamau Mwangi hereinafter referred to as the appellant was convicted by the Senior Resident Magistrate Kangema on 9th March 1999 for the offence of Malicious Damage to property. He was sentenced to pay a fine of Kshs.30,000/- in default to serve 36 months imprisonment

The appellant filed his petition of appeal on 27th May 1999, but for some reasons the same did not come up for hearing until 26th May 2005. It is evident from the proceedings that the prosecution was partly conducted by Sgt. Kilonzo whom as per the authority for **Elirema and Another v/s Republic [2003] 1. E. A. 50 (C.A.K)** is not a person qualified to prosecute. The proceedings were therefore a nullity. The appellant's conviction is therefore hereby quashed and his sentence set aside. Though present in court the State Counsel did not offer any response to this appeal. It is therefore not clear whether the state would like to pursue a retrial.

Nevertheless, the offence was a minor offence of malicious damage to property. It was allegedly committed over 9 years ago. It is evident that an order for a retrial would not serve any useful purpose and I therefore shall make none.

The appellant shall be refunded the fine of Kshs.30,000/- if the same was paid.

***Dated, signed and delivered this 30th day of May 2005.***

**H. M. OKWENGU**

**JUDGE**