

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL APPEAL NO. 30 OF 2003

(Appeal against both conviction and sentence of the Senior Resident Magistrate's Court at Vihiga in Criminal Case No. 1347 of 2001 (W. K. KAHINDI ESQ., DMII (PROF))

TOM MUHINGI NAMUSEI:..... APPELLANT

V E R S U S

REPUBLIC :..... RESPONDENT

JUDGEMENT

Tom Muhingi Namusei, the appellant, was placed on probation for a period of 3 years following his conviction on 31.1.2003 by W. K. Kahindi Esq., DMII, in Vihiga SRM Criminal case No.1347 of 2001 of the offence of assault contrary to Section 251 of the Penal Code. The Prosecutor was a police Constable, one Mr. Osur. Under Section 85(2) of the Criminal Procedure Code, only an advocate of the High Court or a person employed in the public service not being a police officer below the rank of an Assistant Inspector of police appointed by the Attorney General in writing can prosecute.

The prosecution of the appellant was therefore a nullity.

Mrs. Kithaka, Principal State Counsel, rightly conceded this appeal. Accordingly, the conviction is quashed, and sentence set aside.

Dated at Kakamega this 3rd day of June, 2005.

G. B. M. KARIUKI

J U D G E