



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**

**Criminal Appeal 370 of 2003**

*(From original conviction and sentence in Criminal Case No. 308 of 2003 of the Senior Resident Magistrate's Court at NAROK – P. OKILE, RM)*

**TOPIKA OLE MURUMBI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was charged in the lower court with stealing stock contrary to Section 278 of the Penal Code. He was convicted and sentenced to serve 7 years imprisonment with 4 strokes of the cane. He was aggrieved by the said conviction and sentence and so he filed this appeal.

When the appeal came up for hearing, Mr. Gumo, Assistant Deputy Public Prosecutor told the court that he did not wish to support the conviction because the prosecution of the case in the lower court was conducted by an unqualified prosecutor contrary to the provisions of Section 85 of the Criminal Procedure Code and therefore the proceedings were a nullity in law. He also submitted that the prosecution evidence was insufficient to sustain a conviction and therefore he urged the court to allow the appeal summarily.

I have perused the court file and I entirely agree with the views of Mr. Gumo and consequently this appeal is summarily allowed under Section 352A of the Criminal Procedure Code. I quash the conviction and set aside the sentence that was pronounced by the trial court.

The appellant should be set at liberty unless otherwise lawfully held.

DATED, SIGNED & DELIVERED at Nakuru this 15<sup>TH</sup> day of July, 2005.

**D. MUSINGA**

JUDGE

**15/7/2005**