

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Criminal Appeal 96 A of 2004

DICKSON MUREITHI CHABARI 1ST APPELLANT
ASHFORD MICHENI CHABARI 2ND APPELLANT
VERSUS
REPUBLIC RESPONDENT

(From the conviction and sentence of A.M. Kimani, SRM in Chuka Cr. Case No. 1627 of 2003)

J U D G M E N T

The appellants Dickson Mureithi Chabari and Ashford Micheni Chabari were originally charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. They were each convicted and sentenced to serve a prison sentence of 12 months. They had served 4 ½ months of the sentence at the hearing of this appeal although apparently they thereafter were out on bail/bond pending the result of this appeal. They appeal on both the conviction and the sentence.

At the hearing of this appeal the state counsel Mr. Oluoch conceded the appeal. He pointed out that the prosecution in the lower court was conducted by a police constable who was not qualified to do so under the provisions of section 85 of the Criminal Procedure Code. He conceded that the trial was accordingly a nullity. He did not seek a retrial, most probably because the evidence on record was not adequate to secure a conviction on such possible retrial.

I have carefully perused the record. I am satisfied that the evidence therein will require topping up before a possible conviction can be obtained by the prosecution. It will not therefore be in the interest of justice to order a retrial.

For the above reasons the conviction in question is hereby quashed and the sentence of 12 months prison sentence is hereby set aside. The appellants are hereby set at liberty forthwith unless otherwise lawfully detained in prison. The court understands that the appellants are already free having been granted bail.

Orders accordingly.

Dated and delivered at Meru this 15th day of September 2005.

D.A. ONYANCHA

JUDGE