

IN THE HIGH COURT OF KENYA AT MACHAKOS

Criminal Appeal 255 of 2003

(From Original conviction (s) and Sentence (s) in Criminal Case No. 1000 of 2003 of the Resident Magistrate's Court at Yatta M Maundu on 1/8/03)

JAMES MUTUNGI MBITHI APPELLANT
VERSUS
REPUBLIC RESPONDENT

J U D G M E N T

Appellant was convicted of the offence of being in possession of Cannabis Sativa Contrary to Section 3 (1) and 3 (2) (a) of the Narcotic Drugs and Psychotropic Control Act No. 4 of 1994. He was sentenced to 2 years imprisonment. He has served the sentence. The officer who conducted prosecution was Sergeant Kanyonda, who was unqualified to do so under Section 85 (2) of the Criminal Procedure Code. The state concedes the appeal, rightly so. It does not seek a retrial, rightly so again because appellant has served the sentence. Under these circumstances, the conviction is quashed and the sentence is hereby set aside. The appellant is set at liberty if still in prison.

Orders accordingly.

Dated and delivered at Machakos on the 18th day of October 2005.

D.A. ONYANCHA
JUDGE