

IN THE HIGH COURT OF KENYA AT MACHAKOS

Criminal Appeal 113 of 2003

(From Original conviction (s) and Sentence (s) in Criminal Case No. 112 of 2003 of the Resident Magistrate's Court at Makueni (J.K. KIIA DM I) on 1/4/03

MUSYOKA MUIA MUKULA APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

The appellant was convicted of being in possession of Cannabis Sativa and sentenced to 4 years imprisonment. The prosecution was conducted by an officer who had no authority under Section 85 of the Criminal Procedure Code. The state counsel concedes the appeal and does not seek a retrial. I have considered the appeal. It is the view of court that the whole trial was a nullity and the conviction and sentence should not be left to stand.

Accordingly the conviction is hereby quashed. The sentence of 4 years is also set aside. The appellant is ordered released forthwith unless lawfully held in prison. It is so ordered.

Dated and delivered at Machakos this 28th day of November 2005.

D. A. ONYANCHA

JUDGE