

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Criminal Appeal 107 of 2003

ROBERT MAINA NJOROGE APPELLANT

VERSUS

REPUBLIC RESPONDENT

**(Appeal original from Judgment and Conviction in Senior Principal Magistrate's
Court at Murang'a in Criminal Case No. 111 of 2002 dated 13th May 2002 by L.
Wachira – D.M.II (Prof) – Murang'a)**

J U D G M E N T

Robert Maina Njoroge hereinafter referred to the appellant was tried and convicted by the Resident Magistrate Murang'a for the offence of attempted Rape contrary to section 141 of the Penal Code. He was sentenced on the 11th March 2002 to serve a sentence of 5 years imprisonment and to receive 3 strokes of the cane. It is evident from the proceedings that the prosecution of the trial in the lower court was conducted by one Sgt. Gitau a person who was not competent to prosecute the case under section 85 (2) of the Criminal procedure Code. Needless to state that the trial before the lower court was a nullity and the conviction must be quashed and sentence set aside.

Learned State Counsel Ms Ngalyuka whilst conceding this appeal has intimated to the court that she is not pressing for an order of retrial as the appellant has already served more than half the sentence which was imposed upon him.

I concur with Ms Ngalyuka that an order of retrial may not be appropriate in the circumstances. Accordingly I do allow the appeal, quash the conviction and set aside the sentence imposed upon the appellant.

The appellant shall be set free unless otherwise lawfully held.

Dated signed and delivered this 17th day of November 2005.

H. M. OKWENGU
JUDGE