

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS
Criminal Appeal 88 of 2005 (2)

**(From Original conviction (s) and Sentence (s) in Criminal Case No. 342 of 2005 of
the Resident Magistrate's Court at Kilungu (P.M. Kariuki RM) on 23/8/05)**

CHRISTOPHER MULEI APPELLANT
VERSUS
REPUBLIC RESPONDENT

J U D G M E N T

The appellant was convicted on his own plea and sentenced to two years imprisonment concurrently for assault Contrary to Section 251 and Escape from Lawful custody Contrary to Section 123 of the Penal Code. He appealed against the convictions and sentences.

When the appeal came up today for hearing, Mr O'Mirera, conceded the appeal on both the conviction and sentence. He pointed out that the plea before the trial court was equivocal and that there was no conviction against the appellant recorded. I have perused the record and these facts are confirmed. The conviction and sentence cannot, therefore, be left to stand. The convictions are quashed and the sentences of two years and one year are set aside.

But, Mr O'Mirera, under these circumstances sought for a retrial. He pointed out that the justice of this case requires it. He stated that the appellant had barely started to serve his sentence before he got bail/bond within two months.

I have carefully considered the request for retrial which is strenuously opposed by Mr Mung'ata, representing the appellant. I observe that the appellant had served only two months of the two years sentence. The case was partly an assault case and the complainant must be looking up to the court for justice. In my view, a retrial is what commends itself to be in the interest of justice and this court accepts the state's plea. The appellant shall stand a retrial before another magistrate with jurisdiction. It is recommended that the retrial is conducted in Machakos Law Courts. For that reason the Kilungu Resident Magistrate Criminal Case No. 342 of 2005 is hereby transferred to the Chief Magistrate's Court at Machakos and will be mentioned there on 7/12/05. The appellant to remain on his present bond/bail. It is so ordered.

Dated and delivered at Machakos this 15th day of November 2005.

D.A ONYANCHA

JUDGE