



**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**Criminal Appeal 239 of 2003**

**(From Original conviction (s) and Sentence (s) in Criminal Case No. 103 of 2003 of the Resident Magistrate's Court at Yatta M Maundu on 27/6/03)**

**MUSYIMI NDIKU ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**J U D G E M E N T**

The appellant was convicted of simple robbery Contrary to Section 296 (1) of the Penal Code and creating a disturbance Contrary to Section 85 (2) of the Penal code. He was sentenced to 4 years and 6 months imprisonment respectively. He appealed against convictions and sentences.

The state rightly concedes the appeals because the prosecution was conducted by an unqualified person under Section 85 (2) of the Criminal Procedure Code.

Under the above circumstances the two convictions are quashed and the sentences of 4 years and the other of 6 months are both set aside. The appellant who has served more than half the longer sentence is hereby ordered set at liberty forthwith unless otherwise lawfully detained in prison. It is so ordered.

**Dated and delivered at Machakos this 7th day of November, 2005.**

**D. A ONYANCHA**

**JUDGE**