



IN THE HIGH COURT OF KENYA AT MACHAKOS  
Criminal Appeal 54 of 2003

(From Original conviction (s) and Sentence (s) in Criminal Case No. 41 of 2002 of the Resident Magistrate's Court at Tawa P.N. Morigori on 23/9/02)

RICHARD MBOYA KIVINDYO ..... APPELLANT  
VERSUS  
REPUBLIC ..... RESPONDENT

J U D G E M E N T

The appellant was charged and convicted of Stock Theft Contrary to Section 278 of the Penal Code. He was sentenced to five years imprisonment with 5 strokes of the cane. He appealed against the conviction and sentence. He has so far served 3 years of the 5 years sentence.

The state concedes the appeal on the ground that prosecution was conducted by an unqualified officer – being a police corporal which therefore makes the trial a nullity. The state rightly is not anxious to seek a retrial.

Under these circumstances, the court quashed the conviction and sets aside the sentence of five years and 5 strokes of the cane, which last part is in any case illegal. Accordingly, the appellant's appeal is hereby allowed. Appellant shall be released from prison forthwith unless otherwise therein lawfully detained. It is so ordered.

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

**D.A. ONYANCHA**  
**JUDGE**