

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Criminal Appeal 100 of 2003

PAUL MAINA KINYANJUI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from original Judgment and Conviction in Chief Magistrate's Court at Nyeri in Criminal Case No. 1369 of 2002 dated 29th May 2002 by Mr. M. N. Omosa – R.M. – Nyeri)

J U D G M E N T

Paul Maina Kinyanjui was charged before the Resident Magistrate Nyeri with the offence of stealing from the person contrary to section 279 (a) of the Penal Code. he was convicted on his own plea of guilty and sentenced to serve 5 years imprisonment and 2 strokes of the cane. He has now appealed against his conviction and sentence.

It is evident from the proceedings that though the appellant's plea was unequivocal, the trial was a nullity as the case was prosecuted by Senior Sgt. Kigera a person who was not qualified to prosecute the case. On this ground the appellant's conviction cannot stand.

The appellant has already served 3½ years out of the 5 year term of imprisonment imposed on him. An order for retrial would neither be fair nor just. I therefore allow the appeal, quash the conviction and set aside the sentence imposed. The appellant shall be set free unless otherwise lawfully held.

**Dated signed and delivered this 6th day of December 2005 H. M. OKWENGU
JUDGE**