



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**crim app 171 of 02**

**MWANZIA NZAU.....APPELLANT**

**V E R S U S**

**REPUBLIC .....RESPONDENT**

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

The State Counsel straightaway concedes this appeal on the ground that it arises out of the trial which was prosecuted by unauthorized prosecutor contrary to Section 85 Criminal Procedure Code. The trial was therefore a nullity. However, the State seeks order for Re-trial on the grounds that there is strong case against the Appellant and that the offence is serious the punishment of which is no less than that of capital punishment.

We have perused the record and it is clear the evidence against the Appellant is overwhelming. In the circumstances, we are of the view that the Appellant would not be prejudiced by a Re-trial.

We therefore order that the Appellant shall be re-tried in Mombasa by a different court.

The Accused shall remain in custody to appear before Chief Magistrate's Court for Mention on 18/6/2004. Dated at Mombasa this 14th day of June, 2004. JOYCE KHAMINWA

**J U D G E**

**D. K. MARAGA**

**J U D G E**