

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

APPELLATE SIDE

CRIMINAL APPEAL No.241 OF 2002

**(From Original Conviction and Sentence in Criminal Case No.3501 of 2002 of the Chief
Magistrate's Court at Mombasa –K. Muneeni - R.M.)**

FRANCIS MUNGANIA.....APPELLANT

=V E R S U S=

REPUBLIC.....RESPONDENT

J U D G M E N T

This appeal arises out of a trial conducted by a Police Constable. This is contrary to Section 85 Criminal Procedure Code and that the trial is a nullity. This is conceded by the State (Ms Kwena).

The Appellant was sentenced to 4 years jail and has been in jail since June 2002. He has served a substantial part of sentence. The State does not apply for retrial. I find that this is not a suitable case for retrial and I do not order so.

The result is that the appeal is allowed therefore, conviction quashed and sentence set aside. The Appellant shall be set free forthwith unless he is otherwise lawfully detained.

Dated at Mombasa this 20th day of January, 2004.

**JOYCE KHAMINWA
J U D G E**