

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 236 OF 2003

(From Original Conviction and Sentence in Criminal Case No. 1499 of 2001 of the Senior Resident Magistrate's Court at Kwale Muindi S.S. Esq., District Magistrate II)

1. DAVIS NYAKUNDI MAAKE
2. ALFAN SALIM MWABWETE APPELLANT
- Versus -
REPUBLIC RESPONDENT

J U D G M E N T

The Appellants were charged with the offence of Burglary and Stealing contrary to Sections 304(2) and 279(1) of the Penal Code. After trial before the District Magistrate at Kwale they were both convicted and sentenced to serve one year imprisonment on each limb of the offence. The sentences were to run consecutively. The prosecution case was partly conducted by PC Saidi who was of a rank below that of an assistant inspector of police contrary to section 85(2) of the Criminal Procedure Code. Mr. Monda the State Counsel correctly concedes to the appeal being allowed and does not seek a retrial.

In the circumstances I declare the trial before the Kwale District Magistrate a nullity, quash the conviction and set aside the sentence. Both appellants shall be released forthwith unless otherwise lawfully held.

DATED this 26th day of February 2004.

D.K. Maraga
Ag. JUDGE