

IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 337 OF 2003

(From Original Conviction and Sentence in Criminal Case No. 498 of 2003 of the Senior Resident Magistrate's Court at Kwale Maindi S.S. Esq., District Magistrate II Prof..)

MORRIS NJAGI APPELLANT
- Versus -
REPUBLIC RESPONDENT

J U D G M E N T

The Appellant was charged before the Kwale District Magistrate with the offence of theft contrary to a section which is not disclosed. After trial he was convicted and sentenced to serve 3 months imprisonment. He has appealed against both conviction and sentence.

During the trial the prosecution case was conducted by a police constable, of a rank which is below that of Assistant Inspector of police contrary to section 85(2) of the Criminal Procedure Code. The trial was therefore a nullity. Besides that the charge was also defective. In the circumstances I allow this appeal quash the conviction and set aside the sentence. The Appellant is to be set free forthwith unless otherwise lawfully held.

DATED this 26th day of February 2004.

D.K. Maraga

Ag. JUDGE