

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT OMBASA

crim app 311&310; of 03

KARUKU DUME..... APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH CRIMINAL APPEAL NO.310 OF 2003

RAMADHANI NJANA TSUMA.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

JUDGMENT

I wish to argue only ground No.(1) in the Petition. The matters were prosecuted by Police Constable - Pc. Mukonesi and contrary to Section 85 Criminal Procedure Code. The proceedings are a nullity. I ask the court to allow appeal. The Appellants have already served 5 months of jail term and they have been released on Presidential Amnesty. Ms Mwaniki I concede appeal. The Prosecutor was unauthorized. Sentenced to 12 months imprisonment. Offence of serious nature. The Appellant has served only 5 months. COURT

The Appellants are already released under Presidential Amnesty. This court cannot override the Presidential Order on exercise of his mercy. Again, the trial in the lower court was prosecuted by a Police Constable who was not an authorized prosecutor under Section 85 Criminal Procedure Code which makes the trial a nullity. It can not be said that the Appellants have not suffered punishment. They were arrested on 27/1/03 and in Cr.A.310/03 was released on 23/12/03 and in Cr. A.311/03 on 22/12/03. In the circumstances no retrial can be ordered as it would be unjust to the Appellant. The appeal is therefore allowed.

Dated at Mombasa this 9th day of February, 2004.

JOYCE KHAMINWA

J U D G E