

IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 200 OF 2003

(From original Conviction and Sentence in Criminal Case No. 79 of 2003 of the Resident Magistrate's Court at Taveta G.M. Gogwe Esq., DM I)

ISAACK KAMANDO STANLEY APPELLANT
- Versus -
REPUBLIC RESPONDENT

J U D G M E N T

The Prosecution case before the trial court was conducted by a police sergent contrary to Section 85(2) of the Criminal Procedure Code which requires that public prosecutors should be lawyers or Police Officers of or above the rank of Assistant Inspector of Police.

In the circumstances the trial of the appellant was a nullity and I declare it so. I therefore quash the conviction and set aside the sentence.

As the State is not asking for a retrial I order that the Appellant should be released forthwith unless he is otherwise lawfully held.

DATED this 30th day of March 2004.

D.K. Maraga
Ag. JUDGE