



**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO. 239 OF 2003**

**(From Original Conviction and Sentence in Criminal Case No. 316 of 2003  
of the Principal Magistrate's Court at Voi E.K. Mwaita Esq., DM)**

**ERICK MWALUGHONGO ..... APPELLANT**

**- Versus -**

**REPUBLIC ..... RESPONDENT**

**J U D G M E N T**

This appellants trial was conducted by a corporal of police who is below the rank of Assistant Inspector of police. That is in contravention of section 85(2) of the Criminal Procedure Code. Consequently I declare the trial a nullity and quash the conviction and set aside the sentence. As the State is not seeking a retrial I order that the appellant be released forthwith unless otherwise lawfully held.

**DATED this 29th day of March 2004.**

**D.K. Maraga**

**Ag. JUDGE**