



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL APPEAL NOS.36, 37, 38, AND 39 OF 2003**

**(From original convictions and sentences of the Senior Resident Magistrate's Court  
at HOMA BAY in Criminal Case No.1491 of 2000 - J. WANJALA ESQ., R.M)**

- 1. HARRISON OGOLA KOTTE )**
- 2. JOHN OGAYO ) ..... APPELLANTS**
- 3. GERSHON MISEDA )**
- 4. JOSEPH OKETCH OLANDO )**

**VERSUS**

**REPUBLIC ..... RESPONDENT.**

**JUDGMENT**

Appellants were convicted by SRM HOMA BAY in Criminal Case No.1491 of 2000 on 29th January 2003 on four counts of Arson c/s. 332(a) of the Penal Code. They were sentenced to 18 months imprisonment.

On the hearing date it was pointed out that the lower court's proceedings were faulty as the prosecution was led by an unqualified person to wit a police constable. The state conceded to that point and rightly so. S.82 (2) of C.P.C. is clear on that. Only a Police Officer of the Rank of an Inspector and above can prosecute. The court of appeal in the case of THOMAS OGAMBA NYAKUNDI & ANOTHER VS. R. Cr. Appl. No.217 of 2003 confirmed this.

On that ground alone the appeal are therefore allowed and the convictions quashed. Since the State did not raise the issue of re-trial it is not then ordered. Accused be set at liberty unless otherwise legally held.

**Dated and delivered on 16th March 2004.**

**KABURU BAUNI**  
**JUDGE.**