



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 257 OF 2001

(From Original Conviction and Sentence in Criminal Case No. 318 of 2001 of the

Resident Magistrate's Court at Voi E.N. Maina Esq., Senior Resident Magistrate)

KILURI MWALUMA MAGHOGO APPELLANT

Versus

REPUBLIC RESPONDENT

J U D G M E N T

The appellant in this case was charged before the Senior Resident Magistrate at Kwale with the offence of attempted defilement contrary to section 145(2) of the Penal Code. After trial he was convicted and sentenced to serve five years imprisonment with two strokes of the cane. He has appealed against both the

conviction and sentence.

Mr. Monda learned State counsel has rightly conceded to this appeal being allowed as the prosecution case was conducted by a police corporal contrary to section 85(2) of the Criminal Procedure Code. Having been in prison since the 27th June 2001 he has served a substantial part of his five years term. In the circumstances Mr. Monda does not wish to ask for a retrial. Accordingly I allow this appeal quash the conviction and set aside the sentence and order that the appellant shall be released forthwith unless otherwise lawfully held.

Dated THIS 4TH DAY OF march 2004.

D.K. Maraga Ag. JUDGE