



**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL APPEAL NO.280 OF 2003**

**(From original conviction and sentence of the Senior Resident Magistrate's Court  
at Nyamira in Criminal Case No.649 of 2001 –K. W. KIARIE ESQ., S.R.M)**  
**ABEL KEVIN MESA ..... APPELLANT**  
**VERSUS**  
**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

I have considered the appeal. Indeed on 21/1/02 the prosecution was led by one P.C. Ambani. This is contrary to the provisions of S.85 C.P.C. He was an unqualified person. I therefore quash both the conviction and the sentence. I direct that there be a retrial before another magistrate.

**KABURU BAUNI**

**JUDGE.**

**27/5/2004**