



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL APPEAL NO.251 OF 2003**

(From original conviction and sentence of the RM's court at Keroka in criminal case No.47 of 2003.)

ALEX ONGERI MOMANYI ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

**JUDGMENT:**

The appellant was charged with offence of Burglary and stealing c/s 304(1) P.C. He was convicted and sentenced to 2 years imprisonment.

The state has conceded the appeal as the prosecution was by a Corporal contrary to s.82 (1) CPC. The law is clear on this. Only an officer of rank of an Inspector or above can prosecute. In the circumstances the appeal is allowed and the conviction set aside.

As for retrial I note appellant has already served almost 8 months of the 2 years. The value of the goods stolen was only shs.1580/=. I feel he has been punished enough. It will not be just to subject him to another trial.

In the circumstances the appellant be set at liberty forthwith.

**KABURU BAUNI**

**JUDGE**

**25/5/2004**