

IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NO.310 & 311 OF 2003

(From original conviction and sentence of the RM's court at Keroka in criminal case No.420 of 2003.)

ANNAH BOSIRE) APPELLANTS
MARGARET MORAA)
VERSUS
REPUBLIC RESPONDENT

JUDGMENT:

Appeals KISII HCCRAPP. NO.310 and 311 of 2003 were consolidated. Both appellant were convicted on two charges. The first of being in possession of bhang and the 2nd being in possession of 20 litres of changaa. They were convicted by District Magistrate Keroka and sentenced to one year imprisonment on each count.

The learned state counsel conceded to the appeal and told court that the prosecution was partly conducted by a police corporal.

Indeed that was so. Records shows that on 10th September 2003 prosecution was conducted by one corporal Ochieng. Two witnesses were heard on that day. In the case of THOMAS OGAMBA NYAKUNDI & ANOTHER -VS.- R. C.A. CR.C. NO.217 of 2003 the Court of Appeal held that trial of appellants by a police constable was a nullity.

In this case too the trial in the lower court was a nullity as the prosecutor was unqualified.

The appeal is therefore allowed and the appellants set at liberty.

Delivered on 22nd June 2004.

KABURU BAUNI
JUDGE
22/6/04