

REPUBLIC OF KENYA

HIGH COURT AT KISII

CRIMINAL APPEAL 35 OF 04

RICHARD OKOTH ODERO APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

Appellant was charged with offence of preparation to commit a felony c/s 308(1) of the Penal Code by DM1 Rongo. He pleaded not guilty. Case proceeded for hearing. He was convicted and sentenced to five years imprisonment and 5 strokes of the cane. The learned state counsel conceded the appeal. He stated that prosecution was conducted by a police corporal a person not qualified to prosecute. Indeed this is so. Record shows that on 24th April 2003 when the appellant first appeared in court to take plea the prosecutor was Cpl. Mugo. After that on all the days the matter came up in court record shows "Coram as before"

It is obvious therefore Cpl. Mugo is the one who conducted the hearing. Being an unqualified as provided in s.85 of CPC the trial was a nullity. I therefore allow the appeal and quash both the conviction and sentence. Appellant be set at liberty.

KABURU BAUNI

JUDGE

23/6/2004

Delivered on 23rd June 2004. Mr. Kemo for state.