

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 220 OF 2003

(From Original conviction and sentence in Criminal Case No. 224 of

2003 of the Resident Magistrate's Court, Wundanyi)

YOHANA MAGANGA APPELLANT
VERSUS
REPUBLIC RESPONDENT

J U D G M E N T

The appellant was charged with Kiosk breaking and stealing contrary to Section 306(a) Penal Code in that on 28.5.03 he committed the offence at Wundanyi.

After trial the appellant was found guilty convicted and sentenced to 2½ years imprisonment with effect from 19.6.03. He appealed on grounds which did not include the fact that he was prosecuted by a police constable contrary to section 85(2) CPC. That section only empowers a police officer of the rank of Assistant Inspector and above to conduct police prosecutions.

The learned State Counsel has brought up that fact and thus intended not to support the conviction herein. The court agrees. Accordingly this appeal is allowed; conviction quashed and sentence set aside. Appellant to be set at liberty forthwith unless otherwise lawfully held.

Delivered on 6th January 2004.

J MWERA
JUDGE