



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA  
CR. APPEAL NO. 65 & 66 OF 2001

PETER MUNYASIA MULELE ..... APPELLANTS  
JACKSON NALIANYA SIMIYU  
VS  
REPUBLIC ..... RESPONDENT

J U D G M E N T

On the 15th day of June 2001 the learned Senior Resident Magistrate M/S L.N. Mutende convicted the appellants for the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code. It was stated that on the 3rd day of December 2000 at Bisunu village, Misikhu location in Bungoma District within the Western Province jointly and unlawfully assaulted Centrine Wafula thereby occasioning her actual bodily harm. The learned magistrate sentenced each appellant to a fine of Khs.10,000 and in default to serve 1 year in prison.

In this appeal I have noted from the proceedings that the prosecution was partly conducted by a police corporal who is not authorised under Section 85 (2) of the criminal procedure code to do so. Consequently there was no valid trial which could sustain a conviction nor a sentence. This point was not argued by the parties but I am enjoined to ascertain whether there was a competent trial before the trial court by virtue of the fact that I am sitting as a first appellate court in this appeal.

In the end the appeal is allowed. The conviction is quashed and sentence set aside. The offence was committed on 3.12.2000 nearly five years ago. It will be unfair and unjust to order for a re-trial. Any fines therefore that may have been paid should be refunded forthwith.

**DATED AND DELIVERED THIS 30th DAY OF July 2004**

**J.K. SERGON**  
**JUDGE**