

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 263 OF 2001

(From Original Conviction and Sentence in Criminal Case No.260 of 2001

of the Resident Magistrate's Court at Voi –E.N. Maina –S.R.M.)

STEPHEN MWAIYO NZAI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

R U L I N G

The State have asked for a retrial in this case on the ground that the trial was a nullity from the beginning. The charge is serious and even now the law has enhanced the sentence to that of life imprisonment. Justice demands that the Appellant be put on trial again.

I have perused the authority relied upon by the Appellant. It is clear that when considering the retrial each case has to be considered on its merits. I notice here the Appellant has been in custody for only 2 years and this is below the sentence for this offence.

I therefore consider this to be a proper case for a retrial. I declare this trial to be a nullity. I order the Appellant to be placed in custody and transported to Voi Resident Magistrate's Court for retrial to appear in court on 12th March, 2004 for Plea.

Dated at Mombasa this 8th day of March, 2004.

JOYCE KHAMINWA
J U D G E