



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO. 221 OF 2003**

**(From Original conviction and sentence in Criminal Case No. 5 of 2003 of  
the Resident Magistrate's Court, Wundanyi)**

**ALI MGENJA MJOMBA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**Coram: J W Mwera**

**Magolo for the appellant**

**Gumo State Counsel for Republic**

**Appellant present**

**JUDGEMENT**

The appellant was charged in the lower court at Wundanyi with 2 counts of preparing to commit a felony and assault causing actual bodily harm.

The prosecution was conducted partly by a police inspector and then a police constable. The latter prosecution was contrary to Section 85(2) CPC, thus the trial was a nullity. The Learned State Counsel concedes this and rightly so. He does not wish to press for a retrial.

Having all the above in mind the appeal is allowed, conviction quashed and the sentence set aside. The appellant to be set at liberty forthwith unless otherwise lawfully held.

**Delivered on 8th January 2004.**

**J MWERA**

**JUDGE**

