

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL REVISION 32 OF 2004

(From Original Conviction and Sentence in Criminal Case No.527 of 2004
of the Resident Magistrate's Court at Kaloleni – F.W.Andayi, Esq., R.M.)

DZUYA CHIKOTO.....APPLICANT

=V E R S U S=

REPUBLIC.....RESPONDENT

R U L I N G

Upon perusal of the record and the submissions of counsel I am convinced that the Accused may not have understood the nature of offence and the sentence. Although the Magistrate says he warned him three times.

It also appears from the facts stated that there was a boundary dispute and there could have been a scuffle.

In my view there should be a trial to reach a fair judgment. The old man had not been into court before.

I therefore set aside conviction and sentence. I order for a re-trial. The Accused shall appear before the Kaloleni Court on 9th August, 2004 for Plea and arrangements for re-trial.

He shall remain in custody in the meantime.

Dated this 30th day of July, 2004.

JOYCE KHAMINWA

J U D G E