

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 197 OF 2004

(From original conviction(s) and Sentence(s) in Traffic case No. 768 of 2003 of the
Senior Resident Magistrate's Court at Limuru (Muthoni Mburu - R.M.)

JOHN MUTHUI KAMAU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant, **JOHN MUTHUI KAMAU** lodged this Appeal against the conviction and sentence imposed against him by Limuru Senior Resident Magistrate's Court. The Appellant had been charged of CARELESS DRIVING contrary to Section 49(1) of the Penal Code. He was found guilty and fined 3000/- in default 6 months imprisonment. Being dissatisfied with the conviction he lodged this Appeal

Before the Appellant's advocate, MR. WARIUKI, could address the court, MISS GATERU, learned counsel for the Respondent sought leave to say a word. She submitted that the State was conceding to the Appeal on the grounds that the Prosecution case was conducted by one SGT. WAITHAKA, who was unqualified to do so under Section 85(2) as read with Section 88 of the Criminal Procedure Code. That the trial proceedings were rendered defective. MR. WARIUKI for the Appellant did not object to the concession. MISS GATERU also submitted that due to the nature of the sentence imposed, an order for retrial would only prejudice the Appellant. She submitted that in those circumstances the State was not seeking a retrial.

I have perused the record of the trial court and have confirmed that in deed the Prosecution of the case was led by an unqualified Prosecutor. In ROY RICHARD ELIREMA & ANOTHER vs. REPUBLIC Mom C.A. No. 67 of 2002 the Court of Appeal invalidated proceedings where part of the Prosecution was conducted by an unqualified Police Officer in contravention of the Criminal Procedure Code. Applying this decision, which is binding on this court, I declare the trial court proceedings invalidated and accordingly quash the conviction and set aside the sentence.

On whether or not to order a retrial, it is my view, due to the nature of the offence that no useful purpose will be served by a retrial. The interest of justice do not, in my considered view require it and further the Appellant would be prejudiced if such order were made. I decline to order a retrial. I further order that if any part of the fine in this case was paid, the same should be refunded.

Orders accordingly.

Dated at Nairobi this 21st day of October 2004.

LESIIT

JUDGE

Read, signed and delivered in the presence of;

LESIIT

JUDGE