

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL CASE NO. 486 OF 2002

ELIUD KAMAU NJOROGE.....APPELLANT
Versus
REPUBLIC.....RESPONDENT

*(Appeal against conviction and sentence by Abdul
El Kindly, Principal Magistrate, dated 30th
September 2002, in the Senior Principal
Magistrate's Court at Murang'a Criminal Case
No. 1889 of 2001)*

JUDGMENT

The Appellant faced three counts of robbery with violence contrary to Section 296(2) of the Penal Code and was prosecuted, convicted and sentenced to death on each count. He appealed and during the hearing of his appeal before us, the learned Provincial State Counsel, Mr. Orinda, conceded the appeal pointing out that the trial of the Appellant was a nullity because prosecution was conducted by a prosecutor who was not qualified to prosecute in terms of Section 85(2) of the Criminal Procedure Code. Mr. Orinda added that he was not asking for a retrial.

From record of proceedings before the trial magistrate, there is no dispute that prosecution of the Appellant was done by Police Inspector Kathara and Police Constable Machuki alternatively. The latter was the prosecutor who was not qualified and the prosecution he conducted was substantial in the trial. No doubt the trial thereby became a nullity.

Accordingly, we do hereby allow the Appellant's appeal. Quash his conviction on each count and set aside the sentence thereof. We do order that the Appellant be released forthwith unless lawfully detained in some other cause.

Dated this 8th day of November 2004.

J. M. KHAMONI
JUDGE

H. M. OKWENGU
JUDGE