



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO. 46 OF 2003

MARGARET WANJIRU KARIUKI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

CRIMINAL APPEAL NO. 47 OF 2003

GRACE WANJIKU KANYONYO.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

CRIMINAL APPEAL NO 48 OF 2003

LUCY WANJIKU KARIUKI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

CRIMINAL APPEAL NO. 45 OF 2003

ANN WANJIRU KIHORO.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(Appeal against judgment by G. K. Mwaura, Senior Resident Magistrate, in the Senior Principal Magistrate's Court at Muranga, Criminal Case No. 935 of 2002).

JUDGMENT

The four appeals are consolidated.

From what has been stated above, the learned State Counsel concedes the appeals on the ground that the trial was a nullity because the prosecutor was not qualified in terms of *Section 85 (2)* of the Criminal Procedure Code.

That being the position, each appeal is hereby allowed, the conviction of each Appellant quashed and the

sentence imposed on him set aside.

The fines paid by each Appellant be refunded.

On the issue of a retrial which the learned State Counsel has asked for, I cannot go against my judgments in previous cases, particularly in **Embu H.C. Criminal Appeals No. 71** of 2000 and **No. 18 of 2001 Pharis Mutembei Mutegi and Christopher Mutwiri Njoka** respectively which are to the effect that where an appeal is allowed because the trial has been declared a nullity on the ground that the prosecutor was not qualified in terms of Section 85 (2) of the Criminal Procedure Code, there should be no retrial. The reasons for this are given in the previous judgments I have referred to.

Accordingly, I do order that there be no retrial.

Dated this 1st day of December 2004.

J. M. KHAMONI

JUDGE