

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI**

CIRMINAL APPEAL NO. 164 OF 2001

**FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL
CASE ON. 5118 OF 2000 OF THE CHIEF MAGISTRATE'S COURT AT THIKA**

MWAURA MWANIKI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

These appeals are consolidated. Both appellants were convicted of the offence of preparation to commit a felony c/s 308(2) of the Penal Code and each sentenced to serve 5 years imprisonment.

These appeals are against sentence only. Both appellants were treated as first offenders. The learned trial magistrate had asked for a report by a probation officer on each appellant. The reports were not favourable. However, the probation officer made recommendations that appeared to take over the role of the court.

It is also clear the learned trial magistrate was minded to give the appellants suspended sentences. Her reasoning for change of mind can hardly be justified. The appellants have served just over two years of the sentence imposed. I consider this to be sufficient sentence/punishment.

Accordingly the appeal on sentence is allowed by reducing the period of imprisonment to the term already served such that each of the appellants shall be released forthwith unless otherwise lawfully held.

Orders accordingly.

Dated and delivered at Nairobi this 7th day of March, 2003

MBOGHOLI MSAGHA

JUDGE