

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO.80 OF 2002

**(From Original conviction and sentence in Criminal Case No.3741 of
2001 of the Chief Magistrate's Court, Mombasa)**
FESTUS OCHOL OGADA APPELLANT
VERSUS
REPUBLIC RESPONDENT

J U D G M E N T

Festus Ochola Ogada, the appellant, was convicted of malicious damage to property contrary to Section 339 (1) of the Penal Code, in that on the 12th November 2002 at about 5.30 p.m. at Nyali Estate in Mombasa District willfully and unlawfully damaged a plastic chair valued at KSh.550/- the property of Hanns Mollin. He was conditionally discharged under Section 35(1) of the penal Code.

The appellant filed the present appeal against conviction through the law firm of M/s Marende & Company which was prosecuted by Mr. Nyalwa advocate.

At the commencement of the hearing of this appeal Mr. Nyalwa pointed out to the court that the prosecution had been conducted by unauthorised person, namely Police Constable Asuma, contrary to the Provisions of section 85(2) of the Criminal Procedure Code, which is to the effect that Attorney General may appoint, by writing under his hand, an advocate of the High Court or a person employed in the public service, not being a police officer below the rank of Assistant Inspector of police to be a public prosecutor for the purposes of any case.

Mrs. Margaret Mwangi, learned Principal State Counsel, conceded this appeal and declined to ask for a retrial, quite properly so.

For these reasons, the conviction of the appellant is hereby quashed and sentence is set aside.

It is so ordered.

Dated and delivered at Mombasa this 2nd September 2003.
A.G.A. ETYANG
JUDGE