



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL APPEAL NO.1053 OF 1994**  
**(From Original Conviction and Sentence in Criminal Case No.2073 of**

**1992 of the Principal Magistrate's Court at Kakamega)**

**CHARLES ONDEKO ORUA .....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**ORDER**

Before we could finish delivering the judgment, we have noticed that this appeal had come up for hearing earlier on 30th October, 2000 before Hon. Justice Oguk and Mitey, J in the presence of the appellant and M/S Wanyama, the State Counsel. The appeal record shows that the said two judges observing that the appeal was pending since 1994 and the record of the court was not available as after a diligent search it was not traced. Saying as stated above, the two Judges set aside the conviction and sentence and ordered a re-trial.

They further ordered that the appellant be expeditiously produced before the Chief Magistrate, Kakamega on 20th November, 2000 for plea and re-trial. In the above circumstances we have no jurisdiction to decide on this appeal. We repeat that the two Judges had on 30th October, 2000 quashed the conviction and set aside the sentences. We leave it to the Attorney General to re-try the appellant as stated by Justice Oguk and Mitey, J or to decide taking any other course using his authority relating to the criminal prosecution.

We record our surprise that the Attorney general has not followed up the order made by the two Judges for so long and we trust that it now would be done on or before 15th February, 2002.

**DATED and DELIVERED at NAIROBI this 25th day of January, 2002.**

**V.V. PATEL**

**JUDGE**

**W.K. TUIYOT**

**JUDGE**