

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Appeal 81 of 2004

(From original conviction and sentence in Criminal Case No. 2999 of 2003 of the Resident Magistrate, Kericho – Miss B. A. Ojoo)

ERICK CHERUIYOT KIRUI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant has appealed against the original conviction and sentence imposed on him by Ms B. A. Ojoo, Resident Magistrate on 20th July, 2004 in Criminal Case No. 2999 of 2003. Earlier, the Appellant had been charged for the offence of assault, causing actual bodily harm, contrary to Section 251 of the Penal Code. The facts of the prosecution case as stated in the Charge Sheet are as follows:

“On the 11th October, 2003 at Chepkosilen village in Kericho District within Rift Valley Province unlawfully assaulted Wilson Cheruiyot Rono thereby occasioning him actual bodily harm”.

During the hearing of the case, the prosecution was partly conducted by PC Mwitia who is **not** an authorized officer. In his submissions, Mr. Ngetich has submitted that the trial was a nullity *ab initio* and that the learned Magistrate had failed to appreciate that the entire trial was a mistrial. On the other hand, the State through Mr. Gumo Assistant Deputy Public Prosecutor has **not** opposed the appeal. Since the position of the law is very clear, I hereby allow the appeal. The conviction is hereby quashed while the sentence is set aside.

The Appellant should be released forthwith unless held lawfully.

Judgment written, read and delivered in open Court.

MUGA APONDI

JUDGE

5TH JULY, 2005