



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: KWACH, TUNOI & LAKHA, J.J.A.)**

**CRIMINAL APPEAL NO. 95 OF 1995**

**BETWEEN**

**JOHN WANJALA WAFULA .....  
APPELLANT**

**AND**

**REPUBLIC .....**

**RESPONDENT**

**(Appeal from a Conviction and Sentence of the High Court of  
Kenya at Nairobi (Justice Khamoni) dated 1st July, 1994**

**in**

**H.C.CR.C. NO. 23 OF 1993)**

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

In this case, the learned trial judge invited submissions in writing after the defence was closed. These written submissions were not read in open court nor was the appellant aware about these submissions. Although the trial was with the aid of assessors, they had no idea of what these written submissions were. They did not have a copy and the submissions were not read out in open court. Mr. Kiage who now appears for the appellant concedes and in our opinion rightly that the trial was a nullity. In a criminal trial the accused is an integral part of the proceedings and so are the assessors. Miss Kamau for the Republic also concedes that the trial was a nullity.

Accordingly, we allow the appeal but order that this case is remitted to the superior court for a re-trial before another Judge. In the meanwhile the appellant shall be held in custody until trial.

**Dated and delivered at Nairobi this 10th day of July,  
1998.**

**R.O. KWACH**

**.....**

**JUDGE OF APPEAL**

**P.K. TUNOI**

**.....**

**JUDGE OF APPEAL**

**A.A. LAKHA**

.....

**JUDGE OF APPEAL**

**I certify that this is  
a true copy of the original.  
DEPUTY REGISTRAR**