

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CRIMINAL APPEAL NO 29 OF 1987

MUSYOKA APPELLANTS

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

August 4, 1987 Torgbor J delivered the following Judgment.

The appellant was convicted for carrying excess passengers. The plea was not properly recorded in that the language in which the charge was put to the accused was not indicated. That in my view however is not a vital flaw. The more serious defect is that the facts supporting the charge were neither recorded nor put to the appellant to admit or deny. Apart from such defects the custodial sentence was also unlawful as the appellant should have been given the option of a fine under section 100(2) of (cap 403).

For these reasons the appeal is allowed and the conviction and sentence are set aside.

August 4, 1987

TORGBOR

JUDGE