



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM: E. M. GITHINJI, HANNAH**

**OKWENGU & J. MOHAMMED, J.J.A.)**

**CRIMINAL APPEAL NO. 38 OF 2014**

**BETWEEN**

**JACOB PRINCE MWANIKI.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

(Appeal from the judgment of the High Court of Kenya at Kakamega

(Chitembwe & Wasilwa, JJ.) dated 17<sup>th</sup> February, 2014

in HCCRA NO. 144 OF 2012)

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**JUDGMENT OF THE COURT**

As it is evident from the record that the proceedings in the High Court were presided over by a Bench that included Hon. Wasilwa J, a judge in the Employment and Labour Relations Court, on the authority of the Supreme Court decision in **Republic vs Karisa Chengo & 2 others, Petition No. 5 of 2015**, the proceedings in the High Court were a nullity.

We therefore, allow the appeal, set aside the judgment of the High Court and remit the matter back to the High Court for re-hearing of the High Court appeal before a competent High Court Bench.

**DATED at Kisumu this 29<sup>th</sup> January, 2019**

**E. M. GITHINJI**

.....

**JUDGE OF APPEAL**

**HANNAH OKWENGU**

.....

**JUDGE OF APPEAL**

**J. MOHAMMED**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**