



**IN THE COURT OF APPEAL**

**AT KISUMU**

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

**J. MOHAMMED, JJA.**

**CRIMINAL APPEAL NO. 32 OF 2014**

**BETWEEN**

**DAVID JUMA ATELU.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

(Appeal from the judgment of the High Court of Kenya at Busia (**Tuiyot, J.**) dated 13<sup>th</sup> day of November, 2013 **in HCCR NO. 60 OF 2013**)

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**JUDGMENT OF THE COURT**

It is conceded by the Director Public Prosecutions that the appeal in the first appellate court was heard by two judges, one being a judge of the Environment and Land Court. It is also within our knowledge that **Mr. Justice Kibunja** who was one of the judges who heard the appeal in the first appellate court was appointed as a judge of the Environment and Land Court vide Gazette Notice No. 14346 of 5<sup>th</sup> October, 2012.

Pursuant to the Supreme Court decision in **Republic v Karisa Chengo and 2 Others, Petition No. 5 of 2015**, it is now settled that a judge of the Environment and Land Court has no jurisdiction to hear and determine a criminal appeal in the High Court. In the circumstances, the proceedings before the 1<sup>st</sup> appellate court were a nullity and there is no proper judgment upon which the appeal before us can be anchored. In the circumstances, we remit this matter back to the High Court for re-hearing of the first appeal before a Bench of the High Court made up of judges with competent jurisdiction.

This judgment is signed by only two (2) Judges under **Rule 32(2)**.

**DATED at Kisumu this 13<sup>th</sup> November, 2018**

**E. M. GITHINJI**

.....

**JUDGE OF APPEAL**

**HANNAH OKWENGU**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**