



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA PEAL AT NAKURU
Criminal Appeal 270 of 2005

BETWEEN

CHARLES KARIUKI NJOGU.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from an order of the High Court of High Court of Kenya

at Nakuru (Musinga & Kimaru, JJ) dated 13th July,2004

in

H.C.C.R.A. NO. 272 OF 2000)

JUDGMENT OF THE COURT

The appellant *Charles Kariuki Njogu* was convicted on his own plea of guilty on one count of being in possession of narcotic drugs contrary to **section 3(1)** as read with **section 3(2)** of the Narcotics Drugs and Psychotropic Substances Control Act, and on the second count of cultivating the plant cannabis sativa contrary to **section 10(c)** of the “*Dangerous Drugs Act*”(?). He was sentenced to 2 years imprisonment on the first count and 8 years imprisonment on the second count by the learned Resident Magistrate at Nyahururu (Mr. G. J. Ombito).

The appellant’s appeal to the High Court was summarily dismissed by Visram J under **section 352(2)** of the Criminal Procedure Code.

The appellant is now before us by way of second appeal. The learned Assistant Deputy Public Prosecutor (Mr. Gumo) concedes this appeal on the ground that prosecution in the trial magistrate’s court was conducted by unqualified person one Sgt. Kiama. We agree with Mr. Gumo’s submission since prosecution by Sgt. Kiama was contrary to **section 85(2)** of the Criminal Procedure Code. Consequently the proceedings in the trial magistrate’s court must be declared a nullity.

The appeal is accordingly allowed and convictions quashed, and sentences set aside.

We order that the appellant be released from prison forthwith unless otherwise lawfully held. We note that Mr. Gumo has not asked for the retrial of the appellant and we make no such order.

Dated and delivered at Nakuru this 27th day of February, 2006.

R.S.C. OMOLO

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JUDGE OF APPEAL

E. O. O’KUBASU

.....

JUDGE OF APPEAL

E. M. GITHINJI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR