



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

(CORAM: OMOLO, GITHINJI, JJ.A & DEVERELL, AG. J.A)

Criminal Appeal 45 of 2001

BETWEEN

1. ROBERT WANYIRI WAIHIRA 1ST APPELLANT

and

2. RICHARD MUNDIA WACHUKA2ND APPELLANT

*(An appeal from the Judgment of the High Court of Kenya at
Nyeri (Juma & Tuiyot, JJ) dated 1*

st

December 2000

in

H. C. Cr. Appeals Nos. 418 & 419 of 1999)

JUDGMENT OF THE COURT

Mr. Orinda, learned Senior State Counsel, concedes on behalf of the Republic/Respondent that the conviction recorded against the two appellants is unsustainable on the ground of the principles set out in the case of **ELIRAMA vs.REPUBLIC**, as part of the prosecution was conducted by a Police Sergeant. Mr. Orinda is not seeking a retrial of the appellants as he agrees that might enable the prosecution to fill in gaps left by the evidence now before us. We agree with Mr. Orinda in both aspects and that being so, we allow the appeals by the appellants, quash the conviction recorded against each one of them, set aside their sentences and order that they be released from prison forthwith unless they or any of them be held for some other lawful cause. Dated and delivered at Nyeri this 10th day of May, 2005.

R.S.C. OMOLO

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JUDGE OF APPEAL

E.M. GITHINJI

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JUDGE OF APPEAL

W.S. DEVERELL

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AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR.