

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
(CORAM: KWACH, SHAH & BOSIRE, J.J.A.)

CRIMINAL APPEAL NO. 123 OF 2001

BETWEEN

CHARLES NGAMAU KAHUHA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a Judgment of the High Court of Kenya at Nyeri
(Justice Juma) dated 8th February, 1999

in

H.C.CR.A. NO. 432 OF 1998)

JUDGMENT OF THE COURT

Mr. Oluoch for the State, concedes, quite properly, that the summary rejection by the superior court (Juma, J.) was erroneous as there was sufficient material which qualified the appeal before the High Court for admission and hearing. Additionally the State would like to inquire, at the appeal hearing, into the legality or otherwise of sentence as the facts as found may tend to show that a conviction under section 296(2) of the Penal Code was warranted. All these factors were obviously not looked into by the learned Judge when he summarily rejected *High Court Criminal Appeal No. 432 of 1998*. For these reasons we allow this appeal and direct that *Criminal Appeal No. 432 of 1998* in the High Court be admitted and be heard by a Judge other than Juma, J.

Dated and delivered at Nyeri this 23rd day of October, 2001.

R.O. KWACH

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR