**Ajuoga v Republic**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 26 January 2007

**Case Number:** 223/03

**Before:** O’kubasu, Onyango-Otieno and Deverell JJA

**Sourced by:** LawAfrica

**Summarised by:** E Ongoya

*[1] Criminal practice and procedure – Prosecutor – Competence of prosecutor – Police prosecutor must be of the rank of assistant Inspector of Police and above – Police officer of rank junior to that not a competent prosecutor.*

**Editor’s Summary**

The appellant together with one Omolo Ojwang Gumbo faced three counts of robbery with violence under section 296(2) of the Penal Code. At the conclusion of their trial, the trial Magistrate found them guilty and convicted them. They were both sentenced to death and provided for by law. Their first appeal to the High Court was dismissed. On the second appeal to the Court of Appeal, they raised an issue of the competence of the person who conducted part of the prosecution’s case, being a corporal and not an officer of the rank not below that of assistant inspector. The other issue that arose was whether the court was to order a re-trial of the accused or to release them.

**Held –** For one to be appointed a public prosecutor by the Attorney-General, one must be either an advocate of the High Court of Kenya or a police officer of not below the rank of an Assistant Inspector of

Police. (*Roy Richard Elirema and another v R* [2003] KLR 537 adopted).

Conviction quashed.

In deciding whether or not to order a re-trial, every case must turn on its own facts and circumstances.

In this case, the circumstances were such as to commend an order for a re-trial.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Ahmed Sumar v Republic* [1964] EA 481

*Benard Lolimo Ekimat v R* criminal appeal number 151 of 2004 (UR)

*Henry Odhiambo Otieno v R* criminal appeal number 83 of 2005

*Pascal Clement Braganza v R* [1957] EA 152

*Roy Richard*