**Njogu v Republic**

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

**Date of judgment:** 27 February 2006

**Case Number:** 270/05

**Before:** Omolo, O’kubasu and Githinji JJA

**Sourced by:** LawAfrica

**Summarised by:** H Kibet

*[1] Criminal procedure – Trial – Conduct of prosecution – Prosecution by an unqualified person –*

*Whether prosecution of appellant was proper – Section 85(2) – Criminal Procedure Code.*

**JUDGMENT**

**Omolo, O’Kubasu and Githinji JJA:** 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 Narcotic 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 GJ 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 Sergent Kiama. We agree with Mr *Gumo*’s submission since prosecution by Sergent 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.

For the appellant:

*Information not available*

For the respondent:

*Information not available*