



**Ogot v Republic (Criminal Appeal E054 of 2023)
[2024] KEHC 7593 (KLR) (25 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL APPEAL E054 OF 2023**

KW KIARIE, J

JUNE 25, 2024

BETWEEN

BRIAN OUMA OGOT APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. E033 of 2022 of the Chief Magistrate's Court at Homa Bay by Hon. B.K. Toroitich –Resident Magistrate)

JUDGMENT

1. Brian Ouma Ogot, the appellant herein, was convicted on two counts of arson contrary to section 332 (a) of the Penal Code.
2. The particulars of the offences of arson were that on the 11th day of January 2022, at Nyamanga village, Rangwe sub-county in Homa Bay County, he wilfully and unlawfully set fire to two dwelling houses of Peter Olela Odera valued at Kshs.1,000,000, and to two dwelling houses of Moses Otieno Olela valued at Kshs.1,500,000.
3. The appellant was sentenced to serve ten years imprisonment for the two offences. It was not specified, however, whether the sentence was for each count and whether the sentences were to run concurrently or consecutively. He has appealed against the sentence. The appellant was in person. He raised the following grounds of appeal:
 - a. That the sentence meted was very harsh in the circumstances.
 - b. That the trial court did not consider the appellant's mitigation.
4. The state opposed the appeal. It argued that the two offences were proved to the required standards and that the sentences were commensurate with them.



5. This is a first appellate court. As expected, I have analysed and evaluated all the evidence adduced before the lower court afresh, drawing my conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will, therefore, be guided by the celebrated case of *Okeno vs Republic* [1972] E.A 32.
 1. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of *Nillson vs Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James vs Rex* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. (*R vs Shershevsity* (1912) C.CA 28 T.LR 364).
7. Section 332 (a) of the Penal Code provides:

Any person who wilfully and unlawfully sets fire to—

 - a. any building or structure whatever, whether completed or not; or

is guilty of a felony and is liable to imprisonment for life.
8. When there are two or more counts, the trial court must pronounce itself on the sentence for each count and also whether the sentence ought to run concurrently or consecutively. If the offences were committed in the same transaction as in this case, the sentences are ordered to run concurrently. Where the offences were committed in different transactions, they are ordered to run consecutively.
9. The unfortunate incident occurred due to suspicion of the complainants being involved in the murder of one of their fellow villagers. The appellant was influenced by mob psychology. He is a young person and an orphan. The offences were severe, but these facts should have persuaded the court to meet a lenient sentence. I am persuaded to interfere with the sentence of the learned trial magistrate.
10. The ten-year imprisonment sentence is set aside and substituted with a three-year sentence on each count. The sentences will run concurrently.
11. Since his arrest, the appellant remained in custody, so the sentence should run from then. To avoid doubts, the sentence will run from the 18th day of January 2022.

DELIVERED AND SIGNED AT HOMA BAY ON THIS 25TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

JUDGE

