



**Rotich alias Kamau v Republic (Criminal Appeal E039 of 2022)
[2024] KEHC 15044 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15044 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E039 OF 2022
JR KARANJA, J
NOVEMBER 28, 2024**

BETWEEN

JOSPHAT KIPKURUI ROTICH ALIAS KAMAU APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant Josphat Kipkurui Rotich alias Kamau appeared before the Senior Resident Magistrate at Kericho facing a charge of setting fire to crop/cultivated produce, contrary to section 334 (a) of the penal Code.
2. It was alleged that of the 13th day of June, 2023 at Latigo Village in Soin/Segowet within Kericho county, the Appellant willfully and unlawfully set fire to crop of cultivated produce namely Segar cane plantation the property of Peter Ngeno.
3. After a full trial, the Appellant was convicted and sentenced to seven (7) years imprisonment. Being dissatisfied with the conviction and sentence the Appellant filed this appeal on the basis of the grounds set out in the petition of appeal filed herein on 9th December, 2022.
4. At the hearing of the appeal by way of written submissions the Appellant appeared in person and relied fully on his submissions.

The state/respondent was represented by the learned prosecution counsel, Mr. Karanja, who opposed the appeal on grounds stated in his written submissions which he fully relied on.

5. Having considered the appeal and the rival submissions, the duty of this court was to re-consider the evidence and draw its own conclusions bearing in mind that the trial court had the benefit of seeing and hearing the witnesses. In that regard, the evidence led by the complainant Peter Ngeno (PW1) and



the rest of the prosecution witnesses (PW2 –PW5) was considered. The Appellant when called upon to make his defence exercised his right of remaining silent.

6. The Trial Court considered the evidence against the Appellant and concluded that the prosecution case had been proved beyond reasonable doubt. In arriving at the finding, the Trial Court established that indeed the complainant's crop of sugar cane was willfully and unlawfully set a blaze and that the person responsible for the act was the Appellant.
7. In this court's opinion, the evidence by Nancy Chelangat Ngeno (PW3) indicated that the Appellant had a pre-meditated intention to set the crop on fire and that she actually saw him setting the complainant's sugarcane on fire at around 10.30 am. Florida Ngeno (PW2), also saw the Appellant setting the sugar cane on fire. All this happened in the absence of the complainant (PW1), but when he was given the necessary informed while at his place of work as a teacher he contacted the area assistant chief and they proceeded to the scene where they found the Appellant holding a panga (Machete) and preventing anybody from putting out the fire.
8. The foregoing evidence was cogent and sufficient and was found to be credible by the trial court. In the circumstances, the Appellant's conviction was proper and lawful and is hereby affirmed.
9. On sentence, the Appellant was handed a seven years imprisonment sentence after it emerged through the probation officer's report that he was not remorseful and had threatened the complaint upon his release. In his further grounds of appeal filed herein on 25th October, 2023, and his submissions, the Appellant expresses remorse and prays for a much lenient sentence.
10. By and large, the sentence imposed upon the Appellant was lawful and reasonable but because he was a first offender and has herein expressed remorse for his unlawful conduct, the sentence was rather excessive and is hereby reduced to imprisonment for a period of four (4) years. It's to that extent that the appeal succeeds.
11. Ordered accordingly.

J.R. KARANJAH

JUDGE.

DATED AND DELIVERED THIS 28TH DAY OF NOVEMBER, 2024.

In presence of;-

Appellant;- Present in person

Mr. Karanja;- state counsel

Mr. Simon Magwa;- Court Assistant.

