



**Kiremi v Republic (Criminal Appeal E129 of 2022)
[2022] KEHC 16639 (KLR) (21 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16639 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E129 OF 2022
TW CHERERE, J
DECEMBER 21, 2022**

BETWEEN

JOHN NTHIGA KIREMI APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal from the conviction and sentence in Chuka Criminal
E023 OF 2022 by Hon. J.M.Njoroge (CM) on 08th April, 2022)*

JUDGMENT

1. John Nthiga Kiremi (appellant) was charged in Chuka Criminal Case No. 1087 of 2016 for the offence of arson contrary to section 332 of same Act. He was on March 18, 2022 convicted and was on April 8, 2022 sentenced to serve 3 years' imprisonment.

Prosecution case

2. Jane Muthoni, the complainant recalled that on September 11, 2016 at about 11.00 am, appellant for no apparent reason set her house on fire using dry grass and attempts to salvage it were unsuccessful. She identified photographs of her burnt house. The incident was witnessed by PW2 Mwititi Gikware who denied committing the crime, and framing the Appellant, PW3 David Mutegi and PW4 John Muindo Karago who rushed to the scene after complainant screamed. PW5 Josphat Gikware and PW6 Japhet Manjau found complainant's house burning and didn't know who burnt it. PC Jacob Lekarei visited the scene, saw the burnt house and took photographs of the scene. The photographs were processed by CPL Gabriel Koskei and tendered in evidence.



Defence case

3. In his sworn evidence, denied the offence and stated he did not go to the scene of crime which is over 2 km away from his home. He accused PW5 Josphat Gikware with whom he had a land dispute of framing him. DW2 Julius Njeru stated that complainant's house was burnt by PW2 Mwitikware. Similar evidence was given by DW3 Gerald Njeru and DW4 Jediel Munyua who stated that they were fencing around Appellant's shamba and that appellant was not present when PW2 Mwitikware went into the kitchen of complainant and lit the house on fire.
4. In a judgment dated June 27, 2022, appellant was convicted and sentenced to serve 3 years' imprisonment.

The appeal

5. Aggrieved by this decision, appellants lodged the instant appeal. From the grounds filed on April 28, 2022 and written submissions filed on December 13, 2022, appellant mainly stated that the prosecution case was not proved to the required standard.

Analysis and Determination

6. It is a duty to re-evaluate, re-analyze and re-consider the whole evidence in a fresh and exhaustive way before arriving at its own independent decision. (See *Collins Akoyo Okemba & 2 Others vs Republic* [2014] eKLR).
7. In considering whether the prosecution case was proved to the required standard, I have reflected on the English case of *Woolmington vs. DPP* 1935 A C 462 in *Miller v Minister of Pensions* {1947} 2 ALL ER 372 where the court held at page 373:

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability”.
8. I have considered the appeal in the light of the evidence on record, the grounds of appeal and submissions by the appellant the state having not filed any. Four prosecution witnesses implicate the appellant as the one that burnt complainant's house. Appellant was well known to the witnesses and the offence having been committed in broad day light, the possibility that witnesses were mistaken as to identity of the person that burnt complainant's house was nil. Consequently, appellant's defence that he was not at the scene of crime was correctly rejected.
9. Concerning the defence witnesses evidence that complainant's house was torched by PW2, complainant and PW2 who is her father in law explained that PW2 only went to the scene to help salvage the house after it was burnt. I therefore find that the trial magistrate rightly considered the defence and rejected it.
10. In the end, I find that the appeal has no merit and it is dismissed. The conviction is upheld and the sentence confirmed.

DELIVERED AT MERU THIS 21st DAY OF December 2022



WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Appellant/Applicant - Present

For the Appellant/Applicant -Mr. Ashaba Advocate

For the Respondent - Ms. Mwaniki (PPC)

