



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL APPEAL NO 08 OF 2020

BENJAMIN CHEBON.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original sentence of Hon. N.M Idagwa, SRM, dated 28th November 2019 in Criminal Case No. 559 of 2019 in the Senior Principal Magistrate's Court at Kabarnet, Republic v Benjamin Chebon)

JUDGMENT

1. In his petition to this court, the appellant has appealed against his sentence of three years' imprisonment in respect of the offence of malicious damage to property contrary to section 339 (1) of the Penal Code (Cap 63) Laws of Kenya, valued at Shs.1500/=.
2. In his mitigation the appellant has informed the court that he is a first offender.
3. He has also informed the court that the complainant who is his father has forgiven him.
4. Additionally, the appellant states that he is the sole winner of his family of two children. Finally, the appellant has stated that he is now a changed person and has decided to follow the word of God.
5. Mr. Abwajo has left the matter to the court to decide.
6. In sentencing the appellant, the trial court stated that: "..... accused sentenced to three years' imprisonment the sentence to start running from 22/7/19 the day he first appeared in court. 14 days right of appeal."
7. I have considered all of the foregoing matters. I find that the trial court erred in back dating the sentence to the date when the appellant was arrested. In principle this is not proper in view of the constitutional provision that the accused is presumed to be innocent until he is convicted as set out in article 50 (2) (a) of the 2010 Constitution of Kenya. It is not proper as at that time the appellant was innocent.
8. I find that what the trial court ought to have done was to take into account the period he had been in custody during the pre-trial remand period and the post judgement and sentence period as mandatorily required by section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya.
9. I further find that the appellant has been in custody since 28th November 2019 to date which translates to about one year and four months, itself being the post judgement and sentence period. He was in pre-trial custody period of about five months. The total custody period is about two years.
10. In view of the foregoing, I find that the ends of justice have been met with the result that his sentence is hereby reduced to the period he has been in custody.
11. The appellant is hereby ordered released unless held on other lawful warrants.

Judgment dated, signed and delivered in open court at Kabarnet this 28th day of April 2021.

J M BWONWONG'A

JUDGE

In the presence of:

Mr. Sitienei, Court Assistant.

Mr. Abwajo for the Respondent.

Appellant present in person.