



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO. 63 OF 2016

ROBERT KAGUIRE MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence in Criminal Case No. 134 of 2016

at Kangema by D. M. Kivuti, Senior Resident Magistrate, dated 18th July 2016)

JUDGMENT

1. The appellant was adjudged *guilty* of *arson* contrary to section 332 (a) of the **Penal Code**. He was sentenced to *ten years* imprisonment.
2. The particulars were that on 23rd March 2016 at Gitathi village, Kangema Sub-County he willingly set fire to a dwelling house belonging to Rahab Njeri Kaguire.
3. The petition of appeal challenges *both* the conviction and sentence. However, on 5th March 2019, the appellant *abandoned* the appeal on *conviction*. He *only* challenges the *sentence*. He said he is a first offender; and, that he lost property in the blaze. He pleaded for *leniency*.
4. Learned Prosecution Counsel *opposed* the appeal. She submitted that the sentence handed down was lenient.
5. This is a *first appeal* to the High Court. I have re-evaluated the evidence and drawn independent conclusions. ***Njoroge v Republic*** [1987] KLR 19, ***Okeno v Republic*** [1972] EA 32.
6. From the evidence of PW1, PW2 and PW3 there is no doubt that the appellant set alight the dwelling house. The complainant is his *wife*. The defence proffered was a red herring. I have reached the conclusion that the conviction was *safe*. In any event, the appellant *no longer* challenges his conviction.
7. Section 354 (3) of **Criminal Procedure Code** empowers this court to *review* the sentence. In ***Macharia v Republic*** [2003] 2 E.A 559 the Court of Appeal held-

“The Court would 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 would not ordinarily interfere with that discretion exercised by a trial judge, unless it was evident that the judge acted upon some wrong principles or overlooked some material factors.”
8. The appellant told the *trial court* in mitigation that he was also a *victim* of the fire: he lost *his* property. That is the same mitigation he now tenders in the appeal.
9. The learned trial Magistrate considered the *mitigation*. He took into account that the appellant was a *first offender*. He also called for a *victim impact statement*.
10. The offence of *arson* carries a sentence of up to *life*. But I have considered that the appellant was the *husband* of the complainant. The three-roomed *semi-permanent* house was *their* home. The appellant was *drunk*. He had *no* previous records. I think the sentence was too harsh in the circumstances.
11. I sentence the appellant to serve *five (5) years imprisonment*. For the avoidance of doubt, the term of imprisonment *shall* take effect from *18th July 2016*, the date of his original conviction.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 26th day of March 2019.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of-

The appellant (in person)

Ms. Gichuru for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.