

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CORAM: D. S. MAJANJA J.

CRIMINAL APPEAL NO. 87 OF 2018

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 88 OF 2018

BETWEEN

EMMANUEL KIPSAT CHEROP.....1ST APPELLANT

RAYMOND KIPLAGAT CHEROP.....2ND APPELLANT

AND

REPUBLIC..... RESPONDENT

(Being an appeal against the original conviction and sentence of Hon. H. M. Nyaberi, SPM dated 8th October 2018 at the Magistrates Court at Eldoret in Criminal Case No. 98 of 2017)

JUDGMENT

1. The appellants, **EMMANUEL KIPSAT CHEROP** and **RAYMOND KIPLAGAT CHEROP** were convicted of the offence of arson contrary to **section 332(a)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars of the offence were that on 15th February, 2017 at about 9.00 pm at Kwalel Village, Elgeyo Marakwet County, they willfully and unlawfully set fire to their four roomed iron sheet house valued at Kshs. 200,000/= the property of Priscah Jepkogei Kipsat.
2. At the hearing of the appeal, the appellant withdrew their appeal on the conviction and urged the court to revise the sentence of five years' imprisonment imposed on them. I heard the plea of Priscah Jepkosgei, who is the 1st appellant's wife and sister in law to the 2nd appellant, who prayed that they be released. I have also looked at the Probation Service Pre-sentencing report which recommended a non-custodial sentence.
3. I have looked at the sentencing notes and I note that the community had already intervened and had already brought the appellants and complainant together and that they had forgiven each other. Since the matter was a family issue, the trial court ought to have considered a non-custodial sentence.
4. Considering all the circumstances, I affirm the conviction but quash the sentence and reduce the same to time served. The appellants are set free unless otherwise lawfully held under a separate warrant.

DATED and DELIVERED at ELDORET this 23rd day of APRIL 2019.

D.S. MAJANJA

JUDGE

Appellant in person.

Ms Oduor, Prosecution Counsel, instructed by the Director of Public Prosecutions for the respondent.