



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CRIMINAL APPEAL NO. 77 OF 2016**

**(Being an appeal from original conviction and sentence in Kitale criminal case No. 539 of 2015 delivered by V.W. Wandera Chief Magistrate on 22/7/16).**

**AMBROSE MWANGI NGUNU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

1. The appellant was charged with the offence of **Malicious damage to property contrary to Section 339 (1) of the Penal Code**. The particulars of the offence were that **on the 2nd day of February 2015, at Gatua are in Trans Nzoia County, willfully and unlawfully damaged ten window glasses valued at Kshs 10,000/- the property of Josephine Nduta Ngunu**.

2. He was convicted and sentenced to 3 years imprisonment hence this appeal. The facts as presented during trial were that **PW1 Josephine Nduta Ngunu** the appellant's mother on 2/2/2015 at around 9.30 pm was having dinner together with her brother Hezekiel Kimani Munyua. The appellant in the company of his wife came to see her but picked up a quarrel with the witness. Immediately they left the house, the appellant began pelting stones on the complainant's house breaking several glasses from the windows. The said witness was injured by one of the flying glasses. She took refuge in the neighbourhood and came back at around 11 pm. The following day the police came and took 16 photographs which the witnesses identified.

3. On cross-examination she said that the appellant broke the window using stones and that he threatened to kill her mother if he managed to get inside the house.

4. **PW2 Ezekiel Kimani Munyua** the brother to PW1 and the uncle to the appellant equally testified to what PW1 stated save that there were other witness in the houses namely a man and a girl who were employees. He testified that indeed it was the appellant who broke the windows and refused any plea from him to have any differences resolved the following days.

5. **PW3 Sergeant James Mulama** from Kitale Police station took up the investigation after PW1 reported. He went to the scene with one I.P. Sirengo the scenes of crime officer who took the photographs. The appellant was then arrested and charged.

6. **PW4 Inspector Fredrick Simiyu Sirengo** went to the scene on 3/2/2015 and took the 16 photographs which he produced. The same shows shattered windows and glass everywhere. He produced them as exhibits.

7. When put on his defence the appellant gave unsworn evidence denying the charge. He said that the windows were broken by 6 young men he had hired to load bricks for one Mzee Wajona who did not pay him. They followed him to her mother's house whom he borrowed money to pay them and upon failing to get, they vented their anger on the said house. He said that he had already repaired the windows and had been forgiven by her mother.

**Analysis and Determination**

8. The court has carefully perused the proceedings herein as well as the written submissions by the appellant. What runs across the grounds of appeal are argument that there was insufficient evidence to convict the appellant.

9. It is not in dispute that the relationship between the appellant and the complainant is a son/mother relationship. It is not in dispute that the complainant's house windows were extensively damaged. The only question is who did the damage.

10. The appellant contents that it was the workers whom he had hired to load bricks that caused the mayhem. None of those 6 loaders were called to testify. Infact Wajona the person who had employed him to carry the bricks was not called to testify. Worse still by giving

unsworn evidence he denied the opportunity of being cross-examined by the prosecution.

11. I am satisfied that the evidence as presented by the respondent was watertight. The evidence of PW2 corroborated what transpired on that night as clearly explained by PW1. Equally the photographs produced by PW4 sealed what the witnesses said, namely the extent of the damages by the appellant.

12. Consequently, I do not see any merit in the appeal. I find that the appellant was clearly a truant and ill mannered child. Infact he ought to seek clemency and forgiveness from her mother. I hope the period he has served in custody will give him a chance to reflect.

13. The appeal is dismissed.

**Delivered, signed and dated at Kitale this 12<sup>th</sup> day of April 2018.**

---

**H.K. CHEMITEI**

**JUDGE**

**12/4/18**

**In the presence of:**

**Mr Kakoi for the State**

**Appellant – present**

**Court Assistant – Kirong**

**Judgment read in open court.**