



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 102 OF 2017

CORAM: D.S. MAJANJA J.

BETWEEN

JAMES THEURU.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of

Hon. G. Sogomo, SRM date 7th September 2017

at the Principal Magistrate's Court at Tigania

in Criminal Case No. 1374 of 2012)

JUDGMENT

1. The appellant **JAMES THEURU**, was convicted on two counts; causing malicious damage to property contrary to **section 339 (1)** of the **Penal Code (Chapter 63 of the Laws of Kenya)** where he was fined Kshs. 20,000/= and in default to serve 6 months' imprisonment and the offence of resisting lawful arrest from a police officer contrary to **section 254 (b)** of the **Penal Code** where he was fined Kshs. 50,000/= and sentenced to **18 months** in default. Both sentences were to run consecutively.

2. Sentencing is an exercise of discretion and the appellate court will not interfere in the sentence unless it is shown that the trial court took into account an irrelevant factor, or that a wrong principle was applied or short of that, the sentence was so harsh or excessive that it manifests an error of principle (see *Ogalo s/o Owuora v R* [1954] EACA 270, *Nilsson v R* [1970] EA 599 and *Wanjema v R* [1971] EA 493).

3. I note from the proceedings that the incident subject to the charge took place on the same day that is 13th September 2012 and formed part of one transaction. Accordingly, the trial magistrate erred by giving a consecutive sentence without giving reasons.

4. Mr. Kimathi, counsel for the appellant, submitted that the sentence was excessive. I have looked at the sentencing notes and they disclose the fact that the appellant was not a first offender as he had been convicted of similar offences, a fact he admitted.

5. I therefore allow the appeal only to the extent that the consecutive sentences are quashed and the appellant shall serve the 6 and 18 months' sentences of imprisonment concurrently. Payment of the fines shall remain concurrent.

DATED and DELIVERED at MERU this 29th day of May 2018.

D.S. MAJANJA

JUDGE

Mr L. Kimathi, Advocate for the appellant.

Mr Namiti, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the respondent.