



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**CRIMINAL APPEAL NO. 147 OF 2017**

**PETER CHEBOI TARUS.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**[An appeal from the original conviction and sentence in criminal case no. 1092 of 2014**

**in the Principal Magistrate's Court at Kabarnet delivered on the**

**18<sup>th</sup> day of June, 2015 by Hon. S. O Temu PM]**

**JUDGMENT**

1. The appellant sought in his appeal a review of the 7 years sentence for imprisonment, for the offence of arson contrary to section 332 (a) of the Penal Code imposed on him by Hon. S.O Temu, PM on 30/6/2015.
2. In his written submission dated 1/10/2018, the appellant prayed for a reduction of the sentence or non-custodial sentence, and urged that he had served 3 years 6 months of the 7 year sentence, and that he had not benefited from remission which had been withdrawn at the time of his sentence.
3. The appellant pleaded for leniency and said that *“the matter herein emanated from my temperamental behaviour which I could not hold back despite the fact that during that very time I was drunk”*. The appellant does not, therefore, challenge his conviction for the offence.
4. The complainant is the accused's father. The accused's conduct in the setting the father's house on fire while the latter slept and threatening to kill him is abhorrent. The appellant had gone to his parents' home and violently demanded for food and money for treatment and the complainant had allegedly answered him badly. The complainant had not been able to rescue their property following the fire, and it is no wonder that the complainant, as stated by the appellant in submissions before this Court, had declined any reconciliation during the trial. The appellant's father lost his property worth Ksh. 40,000/= in the fire.
5. The offence of arson contrary to section 332 (a) of the Penal Code is punishable by imprisonment for 14 years and the trial Court considered that *“the accused is however a first offender and he will not serve the maximum sentence which is **life**”*. Obviously, the trial Court was mistaken in thinking that the sentence applicable for the offence was life imprisonment.
6. In the circumstances of this case where the appellant had set the house on fire, recklessly disregarding that the complainant was sleeping in the house and could have been killed in the fire, the trial Magistrate's sentence of 7 years was, even out of the prescribed **14 years**, wholly lenient, and this Court does not find any reason to interfere under the test of the appellate sentencing in *Wanjema v. R.* (1971) E.A. 443 as follows:

*“An appellate Court should not interfere with the discretion which a trial Court has exercised as to sentence unless it is evidenced that overlooked some material factor took into account some material factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstance of the case”.*

7. That the appellant did not benefit from remission was in accordance with the prevailing law as the same had been removed by the Statute Law (Miscellaneous Amendments) Act of 2014 and only reinstated by the Statute Law (Miscellaneous Amendments) Act 2015 on 15/12/15. There are no ameliorating circumstances in this case, in view of the Probation Officer's negative report, which could have led the trial Court and this Court to exercise discretion more leniently.

## **ORDERS**

8. Accordingly, for the reasons set out above, the appellant's appeal is dismissed.

*Order accordingly.*

**DATED AND DELIVERED THIS 18<sup>TH</sup> DAY OF DECEMBER 2018**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Appellant in person.

Ms. Macharia, Assistant DPP for the Respondent.