

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO.60 OF 2016

JOHN ELIMLIMAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No. 494 of 2014 of the Chief Magistrate’s Court a Isiolo by Hon. J. M Irura – Senior Resident Magistrate)

JUDGMENT

JOHN ELIMLIM the appellant, was convicted for the offence of arson contrary to section 332(a) of the Penal Code.

The particulars of the offence were that on diverse dates between 9th and 10th October 2014 at Game area, in Isiolo County, willfully and unlawfully set fire to a dwelling house of **ROSE EKIRU** valued at Kshs. 250,000/=.

The appellant was fined Kshs.200,000/= in default to serve 7 years imprisonment. The appeal is against both conviction and sentence.

The appellant was in person. He raised two grounds of appeal as follows:

1. That the learned trial magistrate erred in law and in fact by failing to make a finding that vital witnesses were not called.
2. That the learned trial magistrate erred in law and in fact by failed to consider his defence.

The state conceded the appeal through Mr. Namiti, the learned counsel.

After the rental house of the estranged wife of the appellant was burnt, it was alleged that the footprints were those of the appellant. He was arrested and charged.

It would appear that the appellant was arrested on the basis of suspicion. Other than witnesses testifying that the footprints were his, none of them described them and any unique features that led them to conclude they were his. For instance, did he wear unique shoes or did he have a deformity that made him to leave different footprint?

The evidence on record is mere suspicion. It is trite law that however strong a suspicion may be, it cannot be a basis for conviction. This was held in the case of **SAWE vs. REP [2003] KLR 354** the court of appeal said:

Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.

The appeal is allowed. The conviction is quashed and the sentence set aside. He is set at liberty unless if otherwise lawfully held.

DATED at MERU this 27th day of **April, 2017**

KIARIE WAWERU KIARIE

JUDGE