

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL APPEAL NO. 55 OF 2015

FREDRICK OMIDO LUKHASIFA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

1. The Appellant herein, **FREDRICK OMIDO LUKHASIFA** was charged with offence of **malicious damage to property** contrary to **Section 339(1)** of the **Penal Code**. He admitted the charge and he was convicted on his own plea of guilty. He was sentenced to 5 years in prison.

2. The Appellant then preferred a revision on the sentence before the High Court and the same was successful. The sentence was reduced to 3 years on 17/07/2015.

3. Unrelenting, the appellant then filed this appeal seeking a further review of the sentence. I have considered the appeal and the written submissions and find that the Appellant has not demonstrated the principles laid in the case of **Wanjema v. Republic (1971) EA 493** upon which the first appellate Court may act on in dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not take into account a relevant fact or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and as long as the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.

4. The appeal is therefore unsuccessful moreso given that the appellant has already benefitted from the review of the sentence. The appeal is hereby dismissed.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 10th day of April 2017.

A. C. MRIMA

JUDGE