



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKUENI
HIGH COURT CRIMINAL APPEAL NO. 111 OF 2017

AORON KIMEU JOHN APPELLANT

-VERSUS-

REPUBLIC RESPONDENT

JUDGEMENT

1. The Appellant was charged with offence of:-

COUNT I: ATTEMPTED ARSON CONTRARY TO SECTION 333(A) OF THE PENAL CODE

AORON KIMEU JOHN. On the 6th day of March, 2015 at Sakini Village, Kilome Sub-location, Mukaa Location, Mukaa Sub-county, within Makueni County, attempted unlawfully to set fire to a house of Peninah Nthenya John.

COUNT II: CREATING DISTURBANCE IN A MANNER LIKELY TO CAUSE A BREACH OF THE PEACE CONTRARY TO SECTION 95(1) OF THE PENAL CODE.

AORON KIMEU JOHN. On the 6th day of March, 2015 at Sakini village, Kilome Sub-location, Mukaa Location, Mukaa Sub-county within Makueni County created disturbance in a manner likely to cause a breach of the peace by abusing and daring to beat everybody at their home.

COUNT III: RESISTING ARREST CONTRARY TO SECTION 253 OF THE PENAL CODE.

AORON KIMEU JOHN: On the 6th day of March, 2015 at Sakini village, Kilome Sub-location, Mukaa location, Mukaa Sub-county within Makueni County willfully resisted arrest by I.P Muhuhi, a police officer who at the time of the said resistance was acting in due execution of his duty.

2. He was taken to court on 09/03/2015 and pleaded not guilty to Count I and guilty to count II and III. He was not convicted on his own plea as the prosecution was not ready with the facts.
3. On 10/03/2015, the Appellant was taken back to court and he informed court that he also wished to admit Count I. A plea of guilty was also entered in respect of the same Count I.
4. The facts were thus read vide page 5 of the record which were to the effect that on 06/03/2015 at 3.00 p.m. accused went home and found complainant in count I at home. He was with other family members.

5. He shouted to everybody in the homestead and threatened them to stay inside the house and in case anyone appeared he would face his music.
6. He took a can of paraffin and ordered all to get out of the house. The accused poured paraffin on her mother and the rest he poured on the wall of the house. He took a match box intending to light the mother and the house but fortunately there was strong wind and it was blown away.
7. The mother raised an alarm and members of the public came and helped arrest accused. He was violent and police were called. When they went to arrest him he became arrogant and resistant. He was overpowered and arrested and escorted to Kilome police station and charged with the offence before the court.
8. Upon the facts being read to him, he agreed that the facts were correct. The court therefore convicted him on his own plea.
9. The prosecution intimated that he was a first offender. In mitigation the Appellant told court that he was lynched by the people around.
10. The court then went ahead and sentenced him as follows.

Count I - seven (7) years.

Count II - three (3) months.

Count III - three (3) years.

The same were to run concurrently.

11. Being aggrieved by the aforesaid decision, he lodged instant appeal and set out nine (9) grounds of appeal.
12. The 9 grounds were mitigational in nature and are based on his alleged repentance and remorsefulness.
13. The court notes that facts as outlined by the prosecution were vague, inadequate and speculative. It is recorded that;

“He shouted to everybody in the homestead and threatened them to stay inside the house and in case anyone appeared he would face his music. He took a can of paraffin and ordered all to get out of the house. The accused poured paraffin on her mother and the rest he poured on the wall of the house. He took a match box intending to light the mother and the house but fortunately there was strong wind and it was blown away He was violent and police were called..... When they went to arrest him he became arrogant and resistant....”

14. However the appellant did not challenge conviction. He only addressed court on the fact that, he has reformed and undergone training and has a trade now to enable him earn a living. Further, during the hearing he brought his mother who told court that she has forgiven him and wishes to receive him back at home.
15. He relied on his grounds of appeal during the appeal and his mother’s words in court that she has forgiven him and that she is ready to receive him home. He sought court to decree that the served sentence to be adequate punishment and thus sought to serve under community service order or suspended sentence.
16. The state via Assistant Director of Public Prosecution urged that the court to alter the sentence in the circumstances of the case.

17. I have perused the court record, and listened to the Appellant, Assistant Director of Public Prosecution and Appellant's mother.

18. I find the Appellant threatened to burn the mother and her house but did not execute the same threat.

19. He also was arrogant to the police when called but it is not stated as to what he did to amount to resistance to arrest. He was arrested on 06/03/2015 convicted and sentenced to imprisonment on 10/03/2015.

20. The appellant did not get opportunity to mitigate or the court did not explain to him of that right.

21. He has served over two (2) years. He is repentant and remorseful. He has learned a trade and his mother has agreed to forgive him and accept him home.

22. The court finds in the circumstances of the instant matter there are reasons to warrant it to interfere with the sentence imposed. The sentence in Count II has been spent. Count I and III are the ones the sentence is alive and running.

23. In view of the circumstances of the instant case and in the spirit of the reconciliation, I make the following orders:-

1) The sentences imposed are suspended.

2) The appellant is to be released on condition that he does not commit any crime in the next twelve(12) months;

3) In the event he commits any offence within the same period of twelve months from today's date, he shall be arrested and serve the remaining period of the suspended sentence.

SIGNED AND DATED AND DELIVERED THIS 19TH DAY OF JUNE, 2017.

C. KARIUKI

JUDGE

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