



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO 85 OF 2016**

**(Appeal from conviction and sentence in Kangema PM Criminal Case No 405 of 2016 –D M Kivuti, SRM)**

SAMUEL CHEGE MAKERI.....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

**J U D G M E N T**

1. The Appellant herein, **Samuel Chege Makeri**, was convicted upon his own plea of **malicious damage to property** contrary to **section 339(1)** of the **Penal Code**. It was alleged that on 22/10/2014 in Watuha Sub-location in Kangema Sub-County within Murang'a County, he willfully and unlawfully damaged window panes valued at KShs 2,600/00, the property of one **Esther Wangui**. On 26/10/2016 he was sentenced to 5 years imprisonment. He has appealed against both conviction and sentence.

2. The charge was read to the Appellant in a language he understood – Kiswahili. He admitted it. Facts were then given by the prosecution which fully disclosed the offence charged. He admitted those facts. The plea was thus clear and unequivocal. In that case, the appeal against the conviction is incompetent in view of **section 348** of the **Criminal Procedure Code** which specifically bars the appeal in the following words –

**“348. No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”**

3. As for the sentence, though the same is lawful, it is certainly manifestly excessive in the circumstances of this case. The Appellant is a young man born in 1996. That means he was only 20 years old when he was sentenced. He pleaded guilty and this saved the court's valued time, not to mention that a plea of guilty by itself is always a strong sign of remorse. He was also a first offender with no previous conviction. Surely he was entitled to some credit for all this! Yet the trial court awarded him the maximum custodial sentence of 5 years!

4. The complainant was the Appellant's mother. In his mitigation he stated –

**“I want to have my mother forgive me. I have gotten saved. I no longer use drugs as before.”**

The mother stated as follows in court at the Appellant's sentencing –

**“...I work with Murang'a County Government as a revenue clerk. My views are (that) the Accused ought to be punished as my life is in danger. The Accused has caused problems a lot. There are other cases of attacking neighbours.”**

5. The trial court, in sentencing the Appellant, was obviously unduly influenced by this statement of the Appellant's mother. The facts constituting the offence were that the Appellant went home and started throwing stones which damaged the window (panes) whose value was KShs 2,600/00. He then ran away. There was no allegation that he was throwing the stones at his mother or anyone else. The value of the damaged property was very little.

6. It is obvious that the trial court in sentencing the Appellant, was also punishing him for other offences that were not before the court. This resulted in a sentence that was manifestly excessive in the circumstances of the case.

7. In the event I will allow the appeal against sentence by setting aside the sentence of 5 years imposed and substituting therefor a sentence of two (2) years imprisonment from the date of the original sentencing. The appeal against conviction is dismissed. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 17<sup>TH</sup> DAY OF NOVEMBER 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 17<sup>TH</sup> DAY OF NOVEMBER 2017**