



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO. 37 OF 2014

SUSAN ASIYO----- APPELLANT

VERSUS

REPUBLIC-----RESPONDENT

(Appeal against sentence imposed by Chief Magistrate Hon. Ogolah in CM Criminal Case No. 796 of 2014 dated 8th October 2014)

JUDGMENT

1. This is an appeal against sentence only. The principles upon which an Appellate Court can interfere with the sentence of an Appeal Court are settled. They are:-

- i. **If sentence is manifestly excessive in the circumstances of the case, or**
- ii. **If The Trial Court overlooked some material factor, or**
- iii. **took into account, some wrong material, or**
- iv. **Acted on a wrong principle (See Bernard Kimani Gacheru vs Republic [2002] eKLR)**

2. After Trial, the Appellant was found guilty of the offence of Arson Contrary to Section 332(a) of the Penal Code after which the sentence was imposed. Let me reproduce the sentencing proceedings:-

Accused: I ask for leniency of the court so that I may go back and look after the child I left behind. I shall not repeat.

Court: I have considered the mitigation of accused. This is a serious offence and accused caused so much damage without any justification at all. I sentence accused to serve 4 years imprisonment. Right of Appeal 14 days.

3. In arguing her Appeal, the Appellant did not question the legality of the sentence. Instead she made a fresh plea in mitigation. She sought forgiveness. She was remorseful. She undertook not to repeat the offence. She stated that she was an orphan and that she had a child to look after.
4. The maximum possible sentence for the crime of Arson is imprisonment for life. It is however a principle of sentencing that a maximum sentence or indeed a custodial sentence should not be imposed on a first offender unless there exists some aggravating circumstances.
5. Whilst a prison term of 4 years against the possibility of a life imprisonment may appear lenient, it is nevertheless a Custodial sentence. That said, can the Sentencing Court be faulted for imposing the custodial sentence for this first offender? The Court explained its decision as follows:-

“This is a serious offence and accused caused so much damage without any

justification at all.”

This Court has looked at the evidence before the Trial Court and on its own evaluation cannot criticize the sentencing Courts assessment of the gravity of the offence. The Appellant willfully and unlawfully set fire to a dwelling house of a relative. There was no good cause to do so. The fire was intense and nothing was recovered from the house. The owner of the house not only lost all her household items but some other property. It was a big loss to her. There can be no reason for his Court to interfere with the sentence imposed by Sentencing Magistrate. I may have been more lenient than the magistrate but it was her call and not mine. The Appeal is dismissed in its entirety.

Dated, signed and delivered this 19th day of May 2016

F. TUIYOTT

J U D G E

In the presence of :-

.....C/Assistant

.....for the Appellant

.....for the State