



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**HIGH COURT CRIMINAL APPEAL NO 22 OF 2015**

**PAUL ORAMISI OLU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Appeal arising out of the conviction and sentence of Hon. D. O.Ogola in CM Criminal Case No. 7 of 2015 dated 7<sup>th</sup> January 2015)*

**JUDGMENT**

1. Upon perusal of the petition of appeal filed by Paul Oramisi Olu (the Appellant) on 16<sup>th</sup> July, 2016 I find that this is an appeal against sentence only.
2. Sentencing is a matter of discretion exercised by a trial court and is usually based on the facts and circumstances of each case. An appellate court will not normally interfere with a sentence passed unless the sentence is manifestly excessive or based on wrong principles.
3. In **Benard Kimani Gacheru v Republic [2002] eKLR**, the Court of Appeal reaffirmed this principle by stating that:

**“It is not settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellant Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”**

4. The Appellant pleaded guilty to the crime of arson contrary to Section 332(a) of the Penal Code after which a sentence was imposed by the trial court. This is what transpired during sentencing:

**“Accused: I have children at home who are suffering. I am a sole bread winner of my family. I ask for leniency.**

**Court: I have considered the mitigation of accused. The court notes that this is a serious offence which deserves a custodial sentence. I sentence accused to serve 5 years imprisonment. Right of Appeal 14 days.”**

5. In arguing this appeal, the Appellant relied on his written submissions and record of appeal. He made a fresh plea of leniency stating that he was remorseful; undertook not to repeat the offence; and that he was the sole breadwinner. He urged this court to consider his mitigation noting that the trial court failed to do so.

6. Mr. Obiri appearing for the State opposed reduction of the sentence on the ground that the trial court indeed considered the Appellant's mitigation. He asserted that the trial court gave its reasons in passing the sentence by indicating that the offence was a serious one. He concluded by stating that the sentence imposed was indeed reasonable.

7. The Appellant pleaded guilty to the charge of arson contrary to section 332(a) of the Penal code. The maximum sentence provided for the offence is life imprisonment. The prison term of 5 years imposed by the trial court against the possibility of life imprisonment cannot, in my view, be termed as inconsiderate.

8. This court having taken a look at the evidence before the trial court and on its own evaluation cannot criticize the sentencing court's assessment of the gravity of the offence. From the facts adduced before the trial magistrate, the Appellant was part of a larger group that set the house on fire. The said crowd also kidnapped the complainant's mother and beat her.

9. The Appellant in his mitigation never offered any good cause or explanation for doing what he did. The victim suffered a total loss. The sentence was lawful and based on the facts of the case. There is absolutely no legal basis to interfere with the sentence imposed. This court may have been more lenient than the learned magistrate but at the end of the day it is clear that the magistrate did not derogate from the sentencing principles.

10. The upshot is that the appeal has no merit and the same is hereby dismissed.

**Dated, signed and delivered at Busia this 13<sup>th</sup> day of October, 2016**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**