



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL APPEAL NO. 7 OF 2016

PAUL MAINA GITONGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in

Nanyuki Chief Magistrate's Court Criminal Case No. 453 of 2014

by Hon. F. W. MACHARIA Principal Magistrate on 4th July 2014).

JUDGMENT

1. The appellant was charged before the Chief Magistrate's Court Nanyuki with two counts. On the first count he was charged with the **offence of malicious damage to property contrary to section 339 (1) of the Penal Code**. On the second count he was charged with the **offence of arson contrary to section 332 of the Penal Code**. The properties in respect of both counts belong to Teresa Nyaruai Kiboi. The appellant's appeal is against the sentence of the trial court. The trial court on the **first count** sentenced the appellant to serve **1 year** jail term. On the **second count** he was sentenced to a term of **5 years** in jail.

2. The appellant very eloquently and passionately represented himself at the hearing of his appeal. He began by stating that he had reconciled with those that he had wronged and which had led to his incarceration. He admitted that he had done wrong but stated that his time in jail had changed and reformed him. Since his time of imprisonment in the year 2014 he said that he had joined adult education classes at class 7. He sat for his Kenya Certificate of Primary Education (KCPE) in the year 2015 and he obtained 391 marks in that exam. To prove this he presented to the court a newspaper cutting of the star newspaper of January 2/3 2016 which showed him being lifted up by his fellow prisoners who were congratulating him for his pass marks. I can confirm that the newspaper he produced before court does indeed identify him and does indicate that he passed with a score of 391 marks. His ambition having passed that exam is to further his studies by joining Mangu High School and thereafter undertaking an aviation course. His term in prison had also led him to being trained in a trade and therefore he said if released he would be self-reliant. He stated that he had obtained a sponsor to join JKUAT. He further stated that he had undertaken theological training and was due to graduate in December this year. In his own words he said:-

“I have gone through spiritual nourishment. I am reformed and I am born again. I was baptised by Nanyuki SDA.”

3. To prove his interest in religion he showed the court a bible that he was carrying which he said if released he would use it to counsel those who are out of jail to ensure that they do not follow his

footsteps. He finally submitted that the property relating to count 1 and 2 belonged to a lady he called his mother that is, Teresa Nyaruai Kiboi. He stated that he had reconciled with this lady. Because of that statement the court requested the lady called Teresa Nyaruai Kiboi to stand and confirm what the appellant said. She stated:-

“We have reconciled. I want him to come home. He has one brother and they are on good terms with the appellant.”

The appellant having listened to the above statement stated:-

“I was a lost child and like a prodigal son I have repented.”

4. The learned Senior Principal Prosecuting Counsel Mr. Tanui stated in response that on the appellant being arrested in respect to the offence before this court it was noted that he had outstanding warrants of arrests from Makandara Magistrate’s court. The learned counsel submitted that it is important for the appellant to serve his prison sentence in order to be reformed. He however left the issue of the appeal on sentence to the discretion of the court.

5. The court in the case **REPUBLIC VS JAGANI & ANO (2001)KLR 591** held that prison sentence amongst other things is intended to reform the offender. The court held as follows:-

“The purpose of a sentence is usually to disapprove or denounce unlawful conduct as a deterrent to deter the offender from committing the offence, to separate offenders from society if necessary to assist in rehabilitation of offenders, and in retribution by providing for reparation for harm done to victims in particular and to society in general. It is also seen as promoting a source of responsibility in offenders.”

6. It was obvious to the court that the appellant had indeed reformed. He had so reformed that he had entered into the education system and obtained very high marks in his KCPE examinations. It does seem that the time he has spent in prison has had the intended results in his life. He seems to be a young man who is full of ambition very unlike the young man who was described by the probation officer when his case was before lower court as not suitable for a non-custodial sentence. Indeed reading that probation report it was very clear that his family members in particular his grandmother Teresa Nyaruai Kiboi then feared the appellant. He had previously assaulted her before committing the offence before court. It was gratifying to note that the same grandmother has not only forgiven the appellant but requested that he be released to return home. I believe this court ought to give the appellant the second chance that he seeks. The prison term he has so far served has met the intended purpose of rehabilitating him.

7. Accordingly the sentence against the appellant is hereby set aside and the appellant is sentenced to the term already served. The appellant shall be released from custody unless he otherwise lawfully held.

DATED AND DELIVERED THIS 19TH DAY OF DECEMBER 2016.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant

Appellant: Paul Mwangi Gitonga

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE