



206/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 88 OF 2013

**BONIFACE WAMBUA NTHUKU.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

(Being an appeal from the original conviction and sentence in Kithimani Principal Magistrate's Court Criminal Case No. 48 of 2013 by Hon. M.A.O. Opanga Ag. SRM on 29/1/2013)

JUDGMENT

1. The Appellant was charged with the offence of **Arson** contrary to **Section 332(a)** of the **Penal Code**. Particulars of the offence being that on the **22<sup>nd</sup>** day of **January, 2013** at **Baringo village** within **Machakos County** wilfully and unlawfully set fire to a building namely a dwelling house of **Patrick Waita Nthuku** .
2. He admitted the charge. He was convicted and sentenced to serve **seven (7) years imprisonment**.
3. Being aggrieved by the sentence he now appeals on the following grounds :-
  - i. The sentence passed was harsh and excessive
  - ii. He is remorseful
  - iii. He is ready to comply with any conditions to be imposed by the court.
  - iv. He is a family man with responsibilities to his family.
4. **Mrs Abuga**, counsel for the State opposed the appeal arguing that the plea taken was unequivocal and the sentence passed was within the law. She prayed for dismissal of the appeal.
5. I have to reconsider what circumstances made the trial court impose the sentence in issue this being the first appellate court (*see Okeno versus Republic [1972] E.A. 32*).
6. The court considered facts presented by the prosecution and formed an opinion that the act of the accused was deliberate hence the sentence meted out.
7. In the case of **S.V. Sangweni 2010 (1) SACR 419** it was held thus;-

*“A long term of imprisonment should emphasize the seriousness of the offence sufficiently and, at the same time serve the community interest. Such a sentence will also take due account of the need to give the appellant an opportunity and a chance to rehabilitate”.*

8. In another case of **S.V. Mnisi 2009(2) SACR 227(SCA)** it was held thus:-

*“So far as individual deterrence is concerned, the evidence does not suggest that*

*the appellant has a propensity for violence or is a danger to society. He is a first offender and given the unusual circumstances of the case is unlikely again to commit such an offence.”*

9. This is a matter where the appellant pleaded guilty at the outset hence saving courts time. He was a first offender. No evidence was adduced to portray him as a violent person who was dangerous to the society.
10. The law provides for a sentence of upto **life imprisonment**. However, the appellant herein being remorseful is capable of rehabilitation. In the circumstances, this calls for interference with the sentence imposed. I therefore set aside the sentence imposed and substitute it with a sentence of **three (3) years imprisonment**.
11. It is so ordered.

**DATED, SIGNED and DELIVERED at MACHAKOS this 19<sup>TH</sup> day of FEBRUARY 2014.**

**L.N. MUTENDE**

**JUDGE**