



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 35 OF 2014**

**PHILLEMOM KIPKORIR BORE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. **Philemon Kipkorir Bore**, the appellant was charged and convicted of the offence of malicious damage to property **contrary to Section 339(1) of the Penal Code.**
2. According to the particulars the damaged property was a window and a timber wall of a house valued at Shs.5,000/=. Further the complainant is the appellant's mother.
3. He was convicted on admission and sentenced to three (3) years imprisonment.
4. His appeal raises the following grounds;
  - a. *That, the trial Magistrate erred in both law and in fact by failing to satisfy himself that the plea was totally unequivocal and that the appellants understood the element of the offence and their penalty.*
  - b. *That, the sentence awarded was harsh and excessive in all circumstances to the appellant and the case before court.*
  - c. *That, the sentence was convicted on probation officers report which contradicted prosecution submission that appellant was first offender.*
  - d. *That, the appellant herein pray this court to allow the appeal set aside the sentence or in the alternative the appellant be placed on probation.*
5. I have perused the lower court record and I am satisfied that the plea was unequivocal. The necessary procedure was followed to the later.
6. The appellant's main complaint is on the sentence mated out to him. The record shows that the learned trial magistrate called for a Probation Officer's Report which was found to be unfavourable. This clearly shows that the learned trial magistrate had been minded to give the appellant a non-custodial sentence.
7. Considering what was destroyed and it's value and the relationship between the complainant and the appellant the sentence of 3 years was too harsh. The Probation Officer's Report revealed the dark side of the appellant and he is asked to change.
8. The appellant was convicted and sentenced on **4<sup>th</sup> June 2014**. He has already served 7½ months

of the sentence of 3 years which would have been lesser with remission by the Prisons. He must have learnt his lessons.

I therefore confirm the conviction but allow the appeal on sentence. The sentence of 3 years imprisonment is set aside. I substitute it with one of three(3) years on probation from the date of sentence. The conditions are clearly spelt out to the appellant to the effect that if he commits any offence during the Probation term he will be brought back here for completion of the prison term.

The Appellant will be released unless otherwise held under a separate warrant.

**Dated, signed and delivered this 19<sup>th</sup> day of December, 2014**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of:**