



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MIGORI**  
**CRIMINAL APPEAL NO. 60 OF 2014**

**BETWEEN**

**BOKE GIBUKA CHACHA ..... APPELLANT**

**AND**

**STATE ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in Criminal Case No. 13 of 2013 at Principal Magistrate's Court at Kehancha, Hon. A. P. Ndege, Ag. PM dated on 25<sup>th</sup> July 2013)*

**JUDGMENT**

1. The appellant **BOKE GIBUKA CHACHA** was charged with the offence of cutting down crops and cultivated produce contrary to **section 334(a)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars of the charge were that he willfully and unlawfully cut down crops of cultivated coffee and pineapple, the property of one Nashon Gibuka all valued at KShs 295,000.00.
2. He was convicted and sentenced to 5 years imprisonment. He now appeals against conviction and sentence. At the hearing of the appeal his Counsel, Mr Muniko, abandoned the appeal on conviction and submitted that the sentence was harsh and excessive in light of the circumstances.
3. Ms Owenga, counsel for the State, agreed and left the issue for the Court's determination.
4. I have considered the matter. In the sentencing notes the Learned Magistrate did not consider that the appellant was a first offender. He emphasized that the maximum penalty was 14 years and that there was a land dispute between his and his brother, who was the complainant and the opportunities for reconciliation. He also did not consider and discount the option of a fine. I nevertheless think that the appellant has learnt not to take the law into own hands.
5. Accordingly the sentence is reduced to time served. He is released forthwith unless otherwise lawfully held.

**DATED and DELIVERED at MIGORI** this 10<sup>th</sup> day of December 2014.

**D.S. MAJANJA**

**JUDGE**

Mr Muniko, Advocate instructed by the appellant.

Ms Owenga, Principal Prosecuting Counsel, instructed by the Director of Public Prosecutions for the respondent.