

REPUBLIC OF KENYA

High Court at Kakamega

Criminal Appeal 70 of 2011

FRANCIS ODHIAMBO WAKHU APPLICANT

V E R S U S

REPUBLIC RESPONDENT

JUDGMENT

The appellant was charged with the offence of arson contrary to **Section 332** of the **Penal Code**. The particulars of the offence were that the appellant, *on the 1st of July 2010 at Indangalasia location, Mumias District within Western Province, willfully and unlawfully set fire to a dwelling house valued at KShs.10,900/=*. The property of one **ROSIA ANYANYA**. The appellant pleaded guilty and was sentenced to serve Ten (10) years imprisonment.

The appellant contends that the plea was unequivocal, he was not given an opportunity to rethink about his position to take the plea, that the police advised him to plead guilty and that he was not conversant with the language of the court. The appellant submitted that he would like the case to be retried as it was his first time to be in court. He pleaded guilty because the police advised him that if he pleaded guilty he was going to be forgiven.

Mr. Orinda, state counsel, opposed the appeal. Counsel submitted that the taking of the plea was adjourned and the appellant still maintained that he committed the offence.

The record of the trial court shows that the appellant was arraigned before the court on 14th July 2010. He pleaded guilty but the prosecutor sought an adjournment so that he could amend the charge sheet. The matter was adjourned to the following day 15/7/2010 but it did not proceed as the prosecutor did not have the photographs of the burnt house. The plea was re-taken on 27/7/2010 and the charge was read over to the appellant in Kiswahili and the appellant pleaded guilty. The facts were explained to the accused and he admitted the facts. He was allowed to mitigate which he did.

From the record of the trial court, I am satisfied that the plea was unequivocal. The appellant pleaded guilty to both the charge and the facts and cannot retract his plea. The contention that it was the appellant's first time in court is false as the report by the community service officer shows that he had been charged in court for other offences before.

The appellant was sentenced to serve 10 years imprisonment. There was an attempt to commit the appellant to community service but the appellant's past record did not favour such a sentence. Taking into account the circumstances of the case as stated in the facts read to the trial court, I do find that the sentence of 10 years is quite excessive.

In the end the appeal lacks merit and the same is disallowed. The sentence of 10 years imprisonment is set aside and replaced with a four (4) years imprisonment with effect from the date of conviction. The appellant to serve four years' imprisonment.

Delivered, dated and signed at Kakamega this 31st day of January, 2013

**SAID J. CHITEMBWE
J U D G E**