



REPUBLIC OF KENYA

High Court at Kisumu

Criminal Appeal 71 of 2012

MUSA STEPHEN AKOTH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal Case No. 180 of 2012 in the Chief Magistrate's at Kisumu)

J U D G M E N T

The appellant herein was charged with the offence of attempted arson contrary to section 333 (a) of the penal code.

The substance of the charge are that on 27-3-2012 at Nyangande village within Kisumu district of the Nyanza province jointly with others not before court willfully and unlawfully attempted to set fire to a building namely a dwelling house burning 3 suits, 2 bags of fertilizers, 1 coat, 4 blankets, 2 bedsheets, text and exercise books, assorted clothing costing Kshs. 60,000/= all valued at Kshs. 112, 000/=, the property of **Samuel Okello**.

He was also charged with the offence of malicious damage to property contrary to section 339 (1) of the penal code.

The charge was that on 27-3-2012 at Nyangande village within Kisumu district of Nyanza province jointly with others not before court willfully and unlawfully damaged wooden windows and one wooden door all valued at Kshs. 8000/= the property of **Samuel Okello Otieny**.

The 3rd count was assault causing actual bodily harm contrary to section 251 of the penal code.

The charges are that on the 27-3-2012 at Nyangande village within Kisumu district of the Nyanza province jointly with others not before court unlawfully assaulted Ruth Akinyi Mere thereby occasioning her actual bodily harm.

The appellant on his own plea of guilt was sentenced to 5, 2 and 1 years respectively in respect to the above counts.

The 6 grounds of appeal which was filed on 7-6-2012 basically argues that the plea was not unequivocal and that he did not understand the charges read out to him.

I have carefully read the proceedings before the trial magistrate. I respectfully disagree with the appellant. The charges were read to him twice. First during the main plea and later when the charge sheet

was amended.

Further, the trial court at some point seemed to be unsure whether the appellant had the mental capacity to appreciate the charges before him. The court ordered that a psychiatric report be availed, which report proved that he was capable of pleading.

I do not find therefore that there was any miscarriage of justice. He understood the language used, that is, dholuo and he pleaded to the charges. The facts were read to him twice and he answered in the affirmative.

I do not find any merit in the appeal. The conviction and sentence were proper . The appeal is otherwise dismissed.

Dated, signed and delivered at Kisumu this 21st January 2013.

**H.K. CHEMITEI
JUDGE**

In the presence of:

.....for state

.....for appellant

HKC/va