

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

APPELLATE SIDE

CRIMINAL APPEAL NO. 56 OF 2011

(From the original conviction and sentence in criminal case no. 317 of 2011 at the Senior Resident Magistrate's Court at Kilifi before Hon. R. K. Ondieki – SRM)

KATANA KAMBI WANJEAPPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

1. The appellants were co-accused with others in criminal case no. 317 of 2011 from which this appeal arises. They were charged with Malicious damage to property contrary to section 339(1) of the Penal Code. All pleaded guilty. The co-accused who mitigated were discharged under section 35(1) of the Penal Code while the appellants, described in notes before sentence as “not remorseful” were sentenced to two years imprisonment.
2. The fact that they did not mitigate should not have been a basis for a harsher sentence especially since no previous conviction was proved against them. I agree with the defence counsel and the State that the sentence cannot be supported. It is excessive and arbitrary. I accordingly reduce it to the period already served by 14th November, 2011 when they were released on bail pending appeal.

Appeal therefore allowed on sentence.

Delivered and signed at Malindi this **30th** day of **April, 2013** in the presence of the 1st, 2nd and 3rd appellants and Mr. Gekanana for them.

Ms. Mathangani for the State.

Court clerk – Evans

C. W. Meoli

JUDGE