



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 127 of 2011

(From Original Conviction and Sentence in Criminal Case No. 117 of 2011 of the Senior Resident Magistrate's Court at Taveta – C. N. Ndegwa (SRM))

DAVID MUTISO MUTUNGA APPELLANT

- Versus -

REPUBLIC RESPONDENT

JUDGEMENT

Upon conviction for the offence of Arson contrary to Section 332(a) of the Penal Code, the Appellant was sentenced to seven years imprisonment.

The particulars of the charge are that on the 23rd day of March 2011 at Chachewa Village, Taita Taveta County he willfully and unlawfully set fire to a building namely a dwelling house, the property of **John Mutunga**.

The grounds of appeal are mainly based on the evidence adduced at the lower Court. It is the Appellant's contention that he did not set his father's house on fire but the presence of explosive devices therein caused the fire as they lacked safety pins.

PW2 is the prosecution witness. This is what he told the lower Court-

“On 23rd March 2011 at 4.30pm I was at my house when the Accused who is a son to the complainant went and broke into his father's house. He then entered into the house. He stayed inside for three minutes then came outside. I called the father and told him of what had happened. The father came and quarreled with the Accused after the Accused told him that he would kill him. The father left to call police. The Accused entered into the house and drained paraffin from a lantern lamp into a bottle of soda. He then said that he would burn the house. I called the father and told him what Accused had said. The Accused lit fire from inside the sitting room and told me and the other tenants that we can call the father and tell him that he had burnt the house. We struggled to put off the fire. I called the father and told him that the Accused had put his house on fire.”

The evidence of this witness (PW2) was corroborated by the father of the Appellant. His evidence is very graphic as to what the Appellant did. PW2 was a tenant of PW1 and clearly said what the Appellant was doing. He had seen him pour paraffin out of lantern lamp and put it into a bottle of soda and told everybody who would care that he was going to set the house on fire. His defence is that the fire was caused by some explosives which his father had sent him to buy at Arusha – Tanzania and which lacked safety devices.

The same had been stored inside his father's house before erupting. The investigating officer who visited the scene and collected the burnt exhibits found no explosives. The Defence by the Appellant does not hold much water. The Appellant was clearly seen by PW2 setting his fathers house on fire and later running away. It is evident that there was misunderstanding between the Accused and his father. The father told the Court that the Appellant had run away from school while in Form II. He had previously stolen his motorbike and escaped to Lamu.

I am satisfied that the conviction for the offence of Arson was safe. The Appellants willfully and unlawfully set on fire his fathers house. The offence attracts a maximum sentence of life imprisonment.

The Appellant was sentenced to seven years imprisonment. He is not a first offender. The sentence of seven years imprisonment is not harsh nor is it excessive. The Appeal has no merit and is disallowed both on conviction and sentence.

Judgment read and delivered in open Court this 25th day of April, 2013.

M. MUYA
JUDGE

In the presence of:-

Mr. Dzumo for the State

Appellant - present

Court clerk – Mr. Musundi