



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 153 OF 2012**

PATRICK ALIVAYO .....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No. 1612 of 2012 of the Chief Magistrate's Court at Mombasa – B.M. Ekhubi- RM)

**JUDGMENT**

The appellant herein was Convicted and Sentenced to four (4) years imprisonment for the offence of damaging railway property contrary to section 66 of the Railway Act Cap 397 of the Laws of Kenya.

The particulars are that on the 22nd day of May, 2012 at about 18:45 hours at Mombasa Railway Marshalling Yard Mombasa County, jointly, with others not before the Court, damaged a water pipe by digging it with a mattock and a spade valued at Ksh.20,000/= the property of Rift Valley Railways .

The Accused/Appellant pleaded guilty to the charge. Facts were read to him and he admitted them and was subsequently convicted and sentenced to four (4) years imprisonment.

Section 66 (1) (b) provides,

**“ Any person who unlawfully damages or in any way interferes with any train, vessel, vehicle signal, points,rails, sleeper, light house, buoy,mark beacon or other property of the corporation in such a manner as to endanger or as might endanger the life of any person, shall be guilty of an offence and liable to imprisonment for a term not exceeding ten (10) years”.**

The facts presented before the Court do not disclose the offence envisaged under the aforementioned section.

Damaging property is a subset of the offence but it must be shown that the damaging was in such a manner as to endanger or as might endanger the life of any person.

The particulars of the charge do not include the element of endangering life and hence are not in conformity with the offence contemplated by the aforementioned section. Digging a watter pipe in itself does not amount to endangering life.

The particulars of the charge and the facts do not disclose an offence.

The Conviction and Sentence were not safe. The appeal has merit. The Conviction is quashed and Sentence set aside. He is set at liberty unless otherwise lawfully held.

Judgment dated and delivered in open Court this **19th** day of **June, 2013**

**In the presence of:-**

Learned state Counsel Mr. Mungai

Thee Accused present

Court clerk Musundi

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**M. MUYA**

**JUDGE**

**21ST JUNE, 2013**