



**SAMMY KISOVI..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

*(Being an appeal against conviction and sentence in criminal case No.685 of 2003 in the Principal Magistrate's Court Kitui by Hon. M. N. Gicheru P. M. dated 23<sup>rd</sup> July, 2008)*

### **JUDGMENT**

On 19<sup>th</sup> May, 2003, the appellant was arraigned before the Principal magistrate's Court, Kitui to answer various counts ranging from Arson, Grievous harm, Assault to injuring an animal. He allegedly committed those offences on the same day, the 13<sup>th</sup> May, 2003. With regard to Arson contrary to section 332 (a) of the Penal Code, he is alleged to have willfully and unlawfully set fire to a building namely a kitchen belonging to **Kisovi Kiethe**. For grievous harm contrary to section 234 of the Penal Code, he is alleged to have unlawfully done grievous harm to **Kisovi Kiethe** by chopping off his left wrist. In the same vein and that is the subject of the 3<sup>rd</sup> count he unlawfully did grievous harm to **Kalumu Kisovi** by chopping off her right finger. He also assaulted **Nduku Kimanzi** occasioning her actual bodily harm. Finally, he was charged with injuring an animal contrary to section 338 of the Penal Code in that on the material day he unlawfully wounded an animal capable of being stolen, namely a donkey the property of **Kisovi Kiethe**.

The appellant pleaded guilty to all the counts and a plea of guilty was entered against him in respect of each count. The facts as narrated by the prosecution were as follows:-

*“On 13<sup>th</sup> May, 2003 at 7.00 p.m. all the three complainants were at home. The accused found them. He sat outside his home. His father asked him what was wrong as he did not talk to anybody. The accused went to his father. He dropped (sic) off his left wrist and ran away. He then descended on his mother who is the third complainant and cut her on the head. The daughter to the accused's brother went to the accused, she pleaded with the accused. The accused cut her on the right hand finger. She is the complainant in count 3. They all escaped. The accused was left in the compound. He set his own house on fire. He then set his father's kitchen on fire. From there, the accused went and cut a donkey that tethered (sic) in the compound. The accused then went to Mutomo Police Station and made a report that he had killed some people. The accused had a panga which he handed over to the police. The police visited the scene. The injured were referred to Mutomo Mission Hospital.*

*Later on the P3 for the complainants were filled. The P3 for Kisovi Kiethe was filled. He suffered grievous harm, Kalumu Kisovi also suffered grievous harm while Nduku Kimanzi suffered actual*

***bodily harm. LI have the three P3's which I produce as exhibits."***

The appellant confirmed the facts as correct, whereupon he was convicted on his own plea of guilty and was sentenced as follows:

**Count 1    Imprisonment for five (5) years.**

**Count 2    Imprisonment for fifteen (15) years.**

**Count 3    Imprisonment for ten (10) years.**

**Count 4    Imprisonment for three (3) years.**

**Count 5    Imprisonment for one (1) years.**

The sentence was ordered to run concurrently.

The appellant was aggrieved by the conviction and sentence. He therefore lodged this appeal on the grounds that the sentence imposed was manifestly harsh and excessive. He also claimed that the case for the prosecution was not proved beyond reasonable doubts.

When the appeal came up for plenary hearing before me on 14<sup>th</sup> February, 2012, the appellant elected to abandon the appeal on conviction but instead canvass the appeal on sentence.

In support of the appeal on sentence, the appellant submitted that the victims of his rage had chased away his wife. They had also harassed him with cases in Kitui. He did not know what entered his head as to compel him to commit the offences. Otherwise the sentence imposed was manifestly harsh and excessive.

**Mrs. Gakobo**, learned Senior State Counsel opposed the appeal on sentence. She submitted that the appellant committed the offences and had pleaded guilty to the same. The sentence imposed was legal. In fact some of the offences carried life imprisonment. The court took into account the fact that the appellant was not a first offender. Indeed the court made detailed notes on sentencing. There was nothing to show that the trial court did not exercise its discretion in sentencing in a judicial manner.

In the case of **Republic –vs- Jagani & anther (2001) KLR 590**, the court held that an appellate court can only interfere with a sentence imposed by the trial court in the exercise of its discretion where such sentence is against legal principles or when relevant factors were not considered or irrelevant or extraneous matters considered or normally where the sentence is manifestly excessive in the circumstances of the case.

The appellant committed heinous crimes against his father, mother and niece. The offence of grievous harm and arson attracts life imprisonment whereas assault attracts a prison term of 5 years. The offence of injuring an animal attracts maximum sentence of 14 years. In imposing the sentences aforesaid, the learned magistrate considered the gravity of the offences and the after effects on the complainants. The appellant was also not a first offender. He had not learnt any lesson from his previous escapades with the prison. The appellant had not shown any remorse and had even the audacity to tell the court that he wished he had killed his parents. These were worthy considerations. I do not discern any abuse of legal principles or discretion by the learned magistrate in imposing the sentences aforesaid. Neither was there consideration of irrelevant or extraneous matters.

Taking into account all the facts and the circumstances of the case, I am of the firm view that the sentences imposed by the trial court were neither harsh nor manifestly excessive. They were indeed well merited and appropriate. There are therefore no grounds for interfering with them. This appeal on sentence is ordered dismissed.

**Ruling dated, signed and delivered at Machakos, this 29<sup>th</sup> day of February, 2012.**

**ASIKE-MAKHANDIA**

**JUDGE**