



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL REVISION NO.4 OF 2012

JAMES KAMAU MUCHIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant pleaded guilty to the offence of **burning vegetation without authority** contrary to **Section 3(2)** as read with **Section 16** of the **Grass Fire Act**. It was stated in the particulars of the offence that on 30th January, 2012 at Kaibaga Sub-Location, Nyandarua County, the applicant willfully and unlawfully kindled fire which spread and destroyed 91 young acacia trees valued at Kshs.910/= the property of Midipa Internally Displaced Persons Self Help Group. Upon convicting the applicant, the learned trial magistrate, V. K. Kiptoon, Resident Magistrate, sentenced him to five (5) months imprisonment.

Mr. J. N. Njuguna of J. Ndungu Njuguna and Company Advocates has written to this court seeking the revision of those orders citing the grounds that considering the nature of the offence and the manner in which it was committed, the learned trial magistrate ought to have considered other options of punishment. **Section 362** of the **Criminal Procedure Code** which donates to the High Court revisionary powers stipulates the circumstances to be exercised. It is exercised in order for the High Court to satisfy itself as to:

- i) the correctness, or;
- ii) the legality or;
- iii) propriety of any finding, sentence, order recorded or passed, or;
- iv) the regularity of any proceedings of any subordinate court.

The High Court upon revision may make any of the orders contained in **Sections 354, 357 and 358** of the **Criminal Procedure Code** and may enhance the sentence or alter or reverse the order, other than an order of acquittal.

Sections 3(2) and 16 of the **Grass Fires Act** with which the applicant was charged stipulates that:

“(2) No person shall willfully or negligently kindle any fire which by spreading may damage or destroy the property of any other person.”

According to **Section 16** aforesaid, any person who is guilty of an offence under the **Grass Fire Act**, for which no penalty is provided is liable to a fine not exceeding Kshs.4,000/= or to imprisonment for a term not exceeding 12 months or to both fine and imprisonment.

While it is not in doubt that the plea was unequivocal, that the sentence was correct and lawful, the court ought to have considered the circumstances of the offence, namely, that the fire spread to the next farm through no fault of the applicant; that the appellant pleaded guilty and was remorseful; that he was a first offender; that the value of the damaged seedlings was only Kshs.910/=.

For these reasons, the sentence of five (5) months is revised to the period already served. The applicant will consequently be set at liberty forthwith unless otherwise lawfully held.

Dated, Signed and Delivered at Nakuru this 20th day of February, 2012.

W. OUKO
JUDGE