



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 251 OF 2010

(From original conviction and sentence in criminal case No. 1995 of 2010 of the Principal Magistrate's Court at Nyahururu - T. Matheka, P.M.)

WILSON MWANGI

NYAMBURA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged and convicted on his own plea of guilty to the charge of attempted arson contrary to Section 333(a) of the Penal Code (*Cap. 63, Laws of Kenya*). He was sentenced to five years imprisonment by the lower court after perusing an unfavourable Probation Officer's Report from the Probation Officer Nyandarua North District.

Aggrieved with both his conviction and sentence he appealed to this court on four grounds all of which were in mitigation -

- (1) he pleaded guilty,**
- (2) he is a first offender and he did not know that the offence would have resulted in a sentence due to the fact that his anger was beyond control,**
- (3) that the complainant owed him Sh 2,000/= which the complainant kept lying to him that he would pay,**

(4) he is a young family man of 22 years of age and has realized that he made a mistake, and prayed for leniency.

And for those reasons the appellant prayed that his appeal be allowed, that the sentence was harsh, and that he wished to be present during the hearing of his appeal.

The appellant was indeed present during the hearing of his appeal. In his written submissions the appellant submitted that he is a "**Mathare Patient**", and that he has already served his term and that he has reformed and that his term should be reduced.

On his part Mr. Omutelema learned Senior Principal State Counsel submitted though the appellant pleaded guilty to the offence, he was not comfortable with the conviction, because a reference to "**insanity**" in 1st paragraph of p.2 of the Probation Officer's Report referred to above.

The learned trial magistrate considered the Report while sentencing the appellant. I have also considered the Report, and it is clear to me from the p.2, 1st paragraph that "**insanity**" was an excuse introduced by the mother in order to get her son, the appellant, from certain prosecution for alleged incident of defilement. According to the Report the then bad behavior of the appellant was due to abuse of psychotropic substances - namely "**bhang**" and not "**insanity**". In the circumstances, I doubt the excuse of insanity for the appellant's alleged numerous transgressions against his society.

The punishment for attempting to set fire to a building, a dwelling house, is fourteen years imprisonment. The appellant was sentenced to 5 years imprisonment. From the Probation Officer's Report, that sentence was quite proportional to the several prior threats the appellant had issued not only against the complainant in this case, but to other people also, including his grandmother.

I am not a Doctor, but if there was any untoward conduct by the appellant during his period in prison, the authorities would have noticed it, and made an appropriate report. The claim of "**insanity**" is a red herring. I therefore reject the claims of insanity, and dismiss the appellant's appeal as having no merit at all.

For precautionary purpose and for the record, I direct that the appellant be escorted by the prison authorities to the Provincial General Hospital for psychiatrist examination, and a report made within 30 days of today, filed in court and brought to the attention of the court for necessary directions.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 14th day of October, 2011

M. J. ANYARA EMUKULE
JUDGE