



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CRIMINAL APPEAL 74 of 2009

MWAKIO MWANJUMWA APPELLANT
VERSUS

REPUBLIC RESPONDENT
JUDGEMENT

The Appellant herein **MWAKIO MWANJUMWA** has filed this appeal as against his conviction and sentence by the learned Resident Magistrate sitting at Wundanyi Law Courts. The Appellant was arraigned before the court on 4th March 2009 and charged with **MALICIOUS DAMAGE TO PROPERTY CONTRARY TO SECTION 339(1) OF THE PENAL CODE**. The particulars of the offence were that

“On the 16th day of February 2009 at Shaka Village, Wumingu Location in Taita-Taveta District within Coast Province, willfully and unlawfully damaged 2 padlocks and one cup all valued at Kshs.325/- the property of DAVID MWANJUMA.”

The Appellant pleaded guilty to the charge. The court did note that the charge and facts were read out to the Appellant in Kiswahili a language which he understood. The prosecutor **C.I. OMBOGO**, thereafter read out the facts to the Appellant in compliance with S. 207 of the Criminal Procedure Code. The Appellant maintained his plea of guilty by stating in Kiswahili

“Ni ya ukweli”

The court proceeded to convict the Appellant. I am satisfied that the plea was properly taken and that the Appellant’s plea of guilty was unequivocal. After listening to his mitigation the trial court sentenced the Appellant to serve four (4) years in jail.

The Appellant has not appealed against his conviction. He does however appeal against his sentence. I have taken note of the value of the damaged items which was Kshs.325/-. The offence was a mere misdemeanour. In his mitigation the Appellant said

“I had a problem with my father and I was filled with anger so

I committed the offence”

This was clearly a domestic dispute between father and son, an all too common occurrence in many homes. The trial court ought in my view to have considered an alternative sentence like a fine, probation or community service. The circumstances did not warrant a custodial sentence, bearing in mind that the Appellant pleaded guilty thereby saving the court from an unnecessary trial. The appeal against sentence succeeds. I note that the Appellant was sentenced on 19th March 2009. He has now spent over one year in jail which in my view is excessive given the nature of the offence. I have no doubt that the Appellant has seen the error of his ways. I hereby reduce his sentence to time served. The Appellant to be set at liberty forthwith unless he is otherwise lawfully held.

Dated and Delivered in Mombasa this 21st day of July 2010.

M. ODERO

JUDGE

Read in open court in the presence of:-

Mr. Onserio for State

Appellant in person

M. ODERO

JUDGE

21/07/2010