



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 150 OF 2010

(From original conviction and sentence in criminal case No. 519 OF 2008 of the Resident Magistrate's Court at Eldama Ravine - D. M. Machage [R.M.] dated 7th May 2009)

EZEKIEL KIRINYET.....

.....APPELLANT

VERSUS

REPUBLIC.....

.....RESPONDENT

JUDGMENT

The Appellant was convicted and sentenced to four (4) years imprisonment for the offence of malicious damage to property contrary to Section 339(1) of the Penal Code (*Cap. 63, Laws of Kenya*).

He has appealed against both his conviction and sentence. The punishment for willful and unlawful destruction and damage of property is imprisonment for 5 years.

In this case, the Appellant was a group of 20 illegal loggers who had entered into with Kama Forest in Koibatek District within the Rift Valley Province, and were cutting down forest trees without licence. When confronted by the Forest Rangers PW1, PW2 and PW3 the 20 or so men who were cutting down trees, advanced towards them menacingly with clear intention to injure or cause them serious damage. The men dared the Forest Rangers that they had no ammunition, and one of their men confronted PW1 with the aim of cutting him. PW1 blocked the panga's aimed to cut him by raising his rifle which the Appellant then cut damaging it. In the process, PWII shot the Appellant in the leg to disable him, and he fell down, and had him arrested, taken to Koibatek District Hospital for treatment and was later charged and convicted as stated above.

In his unsworn statement the Appellant stated that he had gone to pick cows, and that when he saw people ran away, he also ran but was shot at by the Forest Range Officer. He denied confronting the officers, or damaging the firearm.

I have carefully reviewed the evidence of the prosecution before court as well as the Appellant's unsworn statement. The evidence is clear, the Appellant was one of the 20 or men who were "*poaching forest produce*" according to the evidence of PWIV, the investigating officer. He produced both the rifle, Mark 4 type as well as the panga, (*later recovered from the appellant*).

In his submissions to the court, the appellant now says he was lured by a wrong friend into breaking the law, and the friend who was the custodian of all exhibits produced in court immediately fled

away upon realizing that things had gone wrong.

The Appellant now realizes that he is only 28 years of age, he hails from a poor family, and live as orphans since losing his parents twelve years ago, he was a job seeker, and hoped to improve his own and the welfare of his family. He prays for a non-custodial sentence, to enable him cater for his younger brothers and sisters.

The Appellant has mitigated well on his appeal. It would have been better for him to have said all these things to the trial court, which might have sympathized with and given him a lesser sentence. It is said that in war the cowardly boy lived to go and see his mother. The full-hardy and reckless never lived to see their homelands again.

The Appellant was the full-hardy and reckless one out of the 20 forest produce poachers. He lived to see himself prosecuted, convicted and sentenced to four years imprisonment. Is he remorseful? He says so - *"I am remorseful of the offence committed and I would honestly desist from committing such crimes in future once given a chance."*

I will take a chance with the Appellant, and give him the benefit of doubt on his plea of remorsefulness. I will however not give him a non-custodial sentence. If PW1 was not a well-trained officer with alertness of mind and able to fend off the panga and if PWIII had not come to his rescue by disabling the Appellant with one shot to the leg, PW1 might well be past tense *i.e.* dead today or be wearing an ugly scar on the face and head.

In exercise therefore of the discretion conferred upon this court by Section 354(3)(a)(ii) of the Criminal Procedure Code, (*Cap. 75, Laws of Kenya*), I would reduce the Appellant's sentence to three (3) years from 4 years to run from the date of his sentence.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 29th day of October 2010

M. J. ANYARA EMUKULE
JUDGE