



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU**

**CRIMINAL APPEAL 186 ‘B’ OF 2008**

**SABASTIAN MBAKA NTHIGA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

***(Being an appeal from the Chuka Principal Magistrate’s Criminal Case No. 1191 of 2008 by Mr. P. Ngare S.R.M. delivered on 2<sup>nd</sup> October 2008)***

**JUDGMENT**

The appellant was charged before the Principal Magistrate Court Chuka CR Case No. 1191 of 2006 with the offence of setting fire on trees contrary to section 334 (c) of the Penal Code. The appellant pleaded guilty. On the facts being read, he confirmed that they were correct. The appellant has filed this present appeal against conviction and sentence. The appeal is based on two grounds. On the first ground, the appellant stated that the lower court violated his rights by failing to provide him with an interpreter. That right is now captured by the constitution in article 50 (2) (M) which provides that a person brought before court has a right to an interpreter. That sub article provides as follows:-

***“50 (2) Every accused person has the right to a fair trial, which includes the right –***

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....
- (g) .....
- (h) .....
- (i) .....
- (j) .....
- (k) .....
- (l) .....

**(m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;**

This right also existed in the old constitution under Section 77. The Court of appeal in various cases has interpreted the provisions of section 77 of the old constitution. In the case Antony Njeru Kathiari & Ano. Vs. Republic CRA No. 21 and 23 of 2004 the Court of Appeal with regard to that right had this to say:-

*“Way back in 1985 this court, in the case of Diba Wako Kiyato V. Republic [1982 – 1988] 1 KAR 1974 held that:-*

***“It is a fundamental right in Kenya, whatever the position is elsewhere, that an accused person is entitled to the assistance of an interpreter through whom the proceedings shall be interpreted to him in a language which he understands.”***

*“The Court in that case was relying on the provisions of section 77 (2) (f) of the Constitution of Kenya and section 198 (1) of the Criminal procedure Code. The court said:-*

***“The practice of recordings (sic), if not the name of the interpreter, at least the nature of the interpretation, has been standard practice in these courts for many years. For example, that which is described as the “plea form,” Form Criminal 133, contains under all the other details of the case and of the accused, a space against the word “interpretation.” There was no compliance with either of these two statutory provisions or with the standard practice in the instant case. The magistrate made no note of the language into which the evidence of the witnesses, many of whom spoke in English or Swahili was being translated.....”***

The question that begs an answer in this appeal is whether the appellant's rights in respect of provision for an interpreter were violated. I answer to that question in the negative. Although it is not reflected in the typed proceedings it is clear from the original hand written proceedings of the learned magistrate that the lower court indicated that the proceedings were interpreted from English/Kiswahili/Kimeru. After the facts were read out by the prosecution, the appellant stated:-

***“Facts are correct.”***

It is clear therefore that the appellant's right to have an interpreter were not violated. The accused set in the second ground of appeal that the sentence of the lower court was harsh and excessive. The appellant as stated before was charged with the offence of setting fire to trees contrary to section 334 of the Penal Code. That section provides for imprisonment on conviction to a maximum of 14 years. The appellant was sentenced to 6 years imprisonment. The prosecution informed the lower court that the appellant was a first time offender. Considering the fact that in his mitigation the appellant stated that he had a young family with school going children who depended on him I find that the sentence of 6 years was harsh and excessive. It should however be borne in mind that the appellant destroyed trees worth Kshs. 600,000/=. Bearing all relevant matters in consideration, I do hereby set aside the sentence of Chuka Criminal Case No. 1191 of 2008 dated 2<sup>nd</sup> October 2008 and in substitution I do hereby sentence Sebastian

Mbaka Nthiga to two years imprisonment. The two years will be calculated from the date of his conviction that is, 2<sup>nd</sup> October 2008. The appeal on conviction is dismissed.

Dated and delivered at Meru this 8<sup>th</sup> day of October 2010.

**MARY KASANGO**  
**JUDGE**