



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Criminal Appeal 375 of 2007**

**MARTIN MWANGI NJOGU..... APPELLANT**

**VERSUS**

**REPUBLIC.....  
RESPONDENT**

***(Being an appeal from the conviction and sentence of B.M. Kimemia Resident Magistrate in Senior Resident Magistrate's Criminal Case No. 300 of 2007 at KARATINA)***

**JUDGMENT**

The only issue raised in this appeal is on sentence. The appellant was charged with three counts; Malicious damage to property contrary to section 339(1) of the Penal Code, creating disturbance in a manner likely to cause a breach of peace contrary to section 95(1) (b) of the Penal Code and being in possession of narcotic drugs contrary to section 3(1) as read with section 2(a) of the Narcotic Drugs and Psychotropic Substances Control Act. He pleaded guilty to the first count, was convicted and sentenced to one year imprisonment. Following a full trial on the other counts he was also convicted and sentenced to five months and three years imprisonment respectively. He was aggrieved by the latter conviction and sentence. He preferred the instant appeal both on conviction and sentence.

However when the appeal came up for hearing, the appellant abandoned the appeal on conviction and elected to pursue the appeal on sentence instead.

The learned Senior Principal State Counsel, conceded the appeal on sentence. Counsel submitted that sentence imposed was manifestly harsh and excessive. He therefore urged me to interfere and correct the manifestly harsh sentence imposed by the learned magistrate.

The appellant welcomed the gesture by the state and also associated himself with the submissions of the learned state counsel in conceding to the appeal on sentence.

This being a first appellate court, it has powers to interfere with the sentence meted out by a trial court. However such interference would only be necessary if there was a clear breach of the Law or principle since it is within the discretion of the trial court to assess the appropriate sentence to impose in all the circumstances of the case. In the instant case the sentence imposed by the learned magistrate was clearly harsh and manifestly excessive and calls for my intervention. My interference with it is to the extent that I will commute the same to that term already served by the appellant with the consequence that the appellant shall forthwith be released from prison custody unless he is otherwise lawfully held.

***Dated and delivered at Nyeri this 29<sup>th</sup> day of January 2009.***

**M.S.A. MAKHANDIA**

**JUDGE**