

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Criminal Appeal 17 of 2007

JUSTUS NYAMU NYAKENDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant pleaded guilty in the lower court. Section 348 CPC states “No appeal shall be allowed in case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of sentence.”

The grounds of appeal are that the mitigation factors and issue of family relationships were not considered and the sentence is harsh and excessive. He is also ailing. The offence was malicious damage to property by destroying items valued at 7000/-. The facts of the case shows that the Appellant was son of complainant (his parents.) The mitigation also shows that he was first offender and his statement shows that he was suffering from emotional distress. The Trial Magistrate was of the opinion that the appellant was a bhang smoking person which has destroyed his mental faculties. He was sentenced to 3 years imprisonment from 24/1/2007.

In the circumstances of this case the sentence is legal. Maximum is 5 years imprisonment and I do not say 3 years is harsh or excessive.

The appeal is dismissed.

Dated this 13th May, 2008.

J. N. KHAMINWA

JUDGE

13/5/2008

Khaminwa - Judge

Njue- Clerk

Appellant

Mr. Omwega for state

Read in open court.

J. N. KHAMINWA

JUDGE