



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CRIMINAL APPEAL 102 OF 2005

(From original conviction and sentence in Criminal Case Number 1114 of 2005 of the Chief Magistrate's Court at Thika –S. Mogaka, S.R.M)

MOSES GITAU WAITHAKA APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

This Appeal is against sentence only. The Appellant was convicted on his own plea of guilty of the offence of Arson contrary to Section 332 (a) of the Penal code. Upon conviction, the Appellant was sentenced to seven years imprisonment. The Appellant was aggrieved by sentence and hence lodged this Appeal. In his Petition of Appeal, the Appellant claims that he is deeply remorseful for the act of arson. That he was a first offender and finally that the sentence imposed was excessively harsh.

When the Appeal came up for hearing before me on 20th November, 2006, the Appellant in support of the Appeal orally submitted that the Court should extend its hand of mercy towards him, that he committed the offence under influence of a devil, that given a chance he would never commit the same offence again and that he had learned his lesson in jail.

Miss Gateru, Learned Counsel appeared for the State and opposed the Appeal. Counsel claimed that the sentence imposed was lawful. That the offence carries a maximum jail term of life imprisonment. Therefore the seven years imprisonment imposed on the Appellant was neither harsh nor excessive.

In matters of sentencing, the sentencing Court exercises some discretion. Unless it is shown that in exercising the discretion, the sentencing Court acted on wrong principle, failed to take into account relevant matters, took into account irrelevant considerations, imposed an illegal sentence, acted capriciously or that the sentence imposed was harsh and excessive the Appellate Court would hardly interfere with the sentence imposed.

In the circumstances of this case, the offence for which the Appellant was convicted carries a maximum sentence of life imprisonment. The Appellant however was sentenced to seven years. Though the sentence was lawful, it would however appear to be harsh and excessive considering the previous relationship between the Appellant and the Complainant. They had been husband and wife previously but at the time the Appellant committed the offence they had been separated. The Appellant was also a first

offender and had pleaded guilty to the charge in the first instance and thereby saved the Court valuable time. The Appellant is remorseful and seems to have learned his lesson.

Taking all the foregoing into account I am constrained to interfere with the sentence to the extent that the Appellant shall serve three years imprisonment effective from the date of conviction.

Dated at Nairobi this 24th day of January, 2007.

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MAKHANDIA

JUDGE

Judgment read, signed and delivered in the presence of

Appellant

Miss Gateru for State

Erick Court Clerk

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MAKHANDIA

JUDGE