

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Criminal Appeal 87 of 2006

MICHAEL NGUGI KIMANIAPPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The Appellant was convicted on 29th March, 2006 for the offence of preparation to commit a felony contrary to Section 308 (2) of the Penal Code. He was sentenced to 5 years with hard labour.

Being aggrieved with the sentence, he lodged this appeal with a view of obtaining a reduced sentence. The Respondent through Mr. Omutelema does not oppose the appeal to this extent. Mr. Omutelema conceded that the sentence meted out was in fact the maximum provided by law under Section 308 (4) of the Penal Code. He stated that there were no exceptional circumstances to warrant the maximum sentence.

I have considered the appeal and the concession by the Respondent. I have also perused the proceedings. I do agree that there are no exceptional circumstances for the application of the maximum sentence allowable by the law.

As a result I do hereby allow the appeal and set aside the sentence of 5 years and hard labour. I substitute the said sentence with imprisonment for a period of 15½ (fifteen and a half) months from the date of conviction.

Since the Appellant has been in prison for the said period of 15½ months, it is deemed that he has fully served his sentence. I therefore order that the Appellant be released from Prison with immediate effect unless he shall otherwise be lawfully held. Orders accordingly.

DATED AND DELIVERED AT ELDORET ON THIS 19TH DAY OF JULY, 2007.

M. K. IBRAHIM

JUDGE