



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT EMBU**

**Criminal Appeal 11 of 2006**

**COSMAS MACHARIA MANEGENE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was charged with 2 counts. Count 1 was the offence of Arson contrary to Section 332 Penal Code. Count 2 was offence of malicious damage to property contrary to Section 339(1) of the Penal Code.

On 3/1/2006 the appellant was taken before the court at Kerugoya. It is recorded that the language used was English/Kikuyu. The Appellant pleaded guilty on count one but not guilty under count 2. The particulars of count 1 were read to the appellant. The summary of which was that he was annoyed by his mother and he burnt her house completely. The appellant admitted the particulars. The court was of view that the offence was very serious and also the Appellant was not remorseful and proceeded to sentence him to six years imprisonment.

On the issue of count 2, the court ordered a hearing on another day. It happened that on the day of hearing count 2, the state withdrew the charge under Section 87 (a) CPC. Referring to grounds of appeal Section 348(1) prohibits appeals where the conviction is on plea of guilty except as to the extent or legality of sentence.

Therefore grounds 1&2 have no merit. On ground 3 the record shows that the language used was English/Kikuyu. This court of record believes what is recorded. This ground is dismissed. Failure to use a language which an accused person understands is in breach of constitutional rights.

On ground 4 the medical report on assessment of age has indicated that in December 2005 the appellant was aged above 18 years of age. This ground is also dismissed. The issue of age touches on legality of sentence.

On the issue of ground 5 that the sentence was harsh and excessive Section 332 prescribes life imprisonment as sentence. The sentence of 6 years is neither harsh nor excessive in the circumstances. I find no reason to interfere in this case in sentence. The appeal is dismissed.

Dated this 22<sup>nd</sup> November, 2007.

**J. N. KHAMINWA**

**JUDGE**

**22/11/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Appellant present**

**Mr. Kimathi for state.**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**