



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO. 265 & 266 OF 2003**

DANIEL NJIRI NGARI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

CRIMINAL APPEAL NO. 266 OF 2003

ANTONY RUMBA NGARI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(Being appeals from the judgment of J. N. Nyagah, Senior Resident Magistrate, dated 6th May 2003, in the Senior Resident Magistrate’s Court at Karatina, Criminal Case No. 115 of 2002)

JUDGMENT

These two appeals were consolidated for hearing so that in this judgment Daniel Njiri Ngari is regarded as the First Appellant while Antony Rumba Ngari is regarded as the Second Appellant. The two appellants were charged with malicious damage to property contrary to *Section 339(1)* of the Penal Code, the particulars alleging that between the 8th and 13th February 2002 at Gitunduti Village the two appellants together with others not before court willfully and unlawfully damaged two dwelling houses valued at Ksh.250,000/= the property of Joseph Ngari Gachegu by demolishing it.

The appellants are sons of the complainant Joseph Ngari Gachegu and prosecution’s case was that on the 24th January the appellants, and a brother of theirs and the Complainant’s nephew called Mugo went to the Complainant’s home and started to stone the Complainant’s house. The Complainant and his wife P.W.2 screaming locked themselves in the house and when neighbours responded, the appellants ran away with the others participating in that stone throwing. The Complainant locked the house and left taking refuge at the home of his son-in-law P.W.3.

On 8th February 2002 when the Complainant and P.W.2 received a report that their house was being demolished, P.W.2 was sent on 9th February to see what was happening. P.W.2 went and hiding in nearby bushes, saw the four people demolishing the main house. She reported back to the Complainant and both of them in turn reported the matter to the Police at Karatina Police Station. The two went back to the home in company of Cpl Mwongera and the Complainant and his wife were able to see the demolition going on as they remained at the back of the Police Land Rover. The Appellants and those assisting them disappeared when they saw the motor vehicle. Policemen viewed the damage and later encouraged the Complainant to re-occupy the home where they had now to stay in a kitchen.

On 11th February 2002 the Complainant and P.W.2 left home. But when they went back, they found the kitchen having been demolished. They went to stay with their son-in-law and reported again to the Police.

On 13th February 2004 it was the Complainant's grandson, P.W.4, who when sent to the Complainant's home to collect clothes he found the two appellants and collaborators gathering demolished materials. The Complainant and son-in-law were given that report and as a result stealthily went to the scene and saw by themselves the gathering going on and subsequently the collected material set on fire. With the assistance of the Police, the two appellants were later arrested and charged with this offence.

During the trial the appellants denied that they committed the offence but the learned trial magistrate rejected their defence. He convicted the appellants and sentenced them to four years imprisonment. They filed these appeals relying on the grounds they told me during the hearing of the appeals, that are still relying on those grounds.

But when Mr. Orinda, the State Counsel, opposed the appeals stating that he supported the convictions and the sentence, the appellants reacted as if they were withdrawing their respective appeals. They said they were satisfied with the sentence imposed and should be left to serve the sentence.

I have, however, looked at the evidence on record in the light of what I was told during the hearing of the appeals. I find that there was sufficient evidence from Prosecution witnesses, particularly the Complainant, his wife P.W.2, P.W.3 and P.W.4 proving the charge against the appellants to sustain the convictions. Another material witness was P.W.5 a Police Officer who visited the scene later and saw the demolition done and the burnings done.

In the circumstances, I do agree with Mr. Orinda that the conviction of each appellant was safe and that the sentence of four years was merited. Even the appellants themselves are now saying that they are satisfied with the sentence.

I do hereby dismiss each appeal in its entirety.

Dated this 23rd day of February, 2006.

J. M. KHAMONI

JUDGE