

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII

Criminal Appeal 63 of 2005

RICHARD OMANGI SAURI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence of the RM's court at Keroka in criminal case No. 504 of 2005 – A.A. INGUTYA, S.R.M.)

JUDGMENT:

Appellant was convicted for the offence of Arson contrary to section 322 (a) of the Penal Code in that on 16th June 2005 at Miriri Sub-Location in Nyamira District willfully and unlawfully set fire to a building namely Kitchen belonging to Sabina Nyaboke Sauri. He pleaded guilty and was sentenced to 20 years imprisonment. He has appealed against the sentence.

The learned state counsel considered to the appeal and stated that the sentence was excessive.

I have considered the appeal. Though it is against sentence only. I find that the charge appellant was convicted of was defective. He was charged with offence of Arson contrary to s.322 (a) Penal Code. There is no offence like that. S. 322 (a) of the Penal Code provides for the offence of handling stolen property and not of Arson.

Offence of Arson is provided for in s. 332 of the Penal Code but this was not the section quoted in the charge sheet. The charge was therefore clearly defective and on that score alone the conviction was wrong.

I therefore quash the conviction and set aside the sentence. Appellant be set at liberty forthwith unless otherwise lawfully held.

Dated 7th March 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

Mr. Kemo for respondent