



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**HCCR APP NO 115 OF 2005**

**GEORGE ATEKA.....APPELLANT**

**VS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant, *George Ateka*, was charged with arson contrary to section 332 (a) of the Penal code.

The particulars of the offence are that on 18<sup>th</sup> and 19<sup>th</sup> day of September, 2005 at Bungoma Town High School in Bungoma district within the Western Province, jointly with others not before the court, willfully and unlawfully set fire to a building namely Administration Block, Laboratory and Computer Room belonging to *BHARASTSIUN RAMUBHA VAGHERA* valued at Ksh.700,000/=.

By record of proceedings, he pleaded guilty and was sentenced to serve 5 years imprisonment.

The record of proceedings is as follows:

*“3.01.2005*

*Before: K. Ngomo SPM*

*Pros: CI Onyango*

*CC: Wanjala*

*Accused: Present*

*C R O & E.*

*ACCUSED: It is true*

*PROSECUTOR: The accused was schooling at Bungoma Town High School. On the night of 18<sup>th</sup> September, 2005, he and others set fire to the Administration Block, the Lab and the computer room. They burned down completely together with the properties therein whose value was Ksh.700,000/=. The complaint Bharastsiun Ramubha Vaghera reported to the police. On 26.09.2005 after investigations they arrested the accused. They found that he was connected to the arson. He was*

*then charged of this offence.*

**K. NGOMO**

**SPM**

**ACCUSED:** *The facts are correct.*

**K. NGOMO**

**SPM**

**COURT:** *G. O. P. & C.*

**K. NGOMO**

**SPM**

**PROSECUTOR:** *He may be treated as a 1<sup>st</sup> offender.*

**K. NGOMO**

**SPM**

**ACCUSED IN MITIGATION**

**Nil**

**SENTENCE:** *The accused is to serve 5 years imprisonment. Right of appeal within 14 days.*

**K. NGOMO**

**SPM”**

**The appellant now appeals to this court against both conviction and sentence. It was urged on his behalf that the plea was not clear from the proceedings which language was used, whether the charge was explained and whether the accused understood the charge. That in any event the facts did not support the charge. That the sentence was harsh and excessive and that the learned trial Magistrate did not take into account all the mitigating circumstance of the case.**

**Mr. Onderi, the state counsel, conceded the appeal on conviction but not on sentence. Mr Onderi urged and rightly so, that the facts and the language in which proceedings were conducted was not indicated. That taking into account the fact that the value of the property lost was Ksh.700,000/=, the sentence was deserved.**

**I have scanned through the record and find as a matter of law that the language in which the proceedings were conducted was not indicated See ADAN VS REPUBLIC (1973) E. A. 445 EACA, and LEBIRINGIN VS REPUBLIC (1974) E.A 103. Having so found there is no need to go into the issue of sentence.**

**There was a defect in the original trial. Accordingly, I order a retrial. See FATEHALI MANJI VS REPUBLIC (1966) E. A 343.**

**The retrial will be conducted by a court of competent jurisdiction within Bungoma other than that of the Senior Principal Magistrate.**

**A copy of this order to be served upon the Senior Principal Magistrate for compliance.**

**DATED and delivered at Bungoma this 25<sup>th</sup> day of May 2006.**

**N.R.O. OMBIJA**

**JUDGE**