



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KAKAMEGA**

**Criminal Appeal 114 of 2003**

***(Appeal from original conviction and sentence of SRM Vihiga in CR.Case  
1351 of 2002 before W.Kahindi DMII)***

**JOHNSTON CHORE**

**AYODI .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

The Appellant, Johnstone Chore Ayodi, was convicted on 4.4.2003 in Vihiga Criminal case No. 1351 of 2002 by W.K. Kahindi, Esq, District Magistrate II of the offence of malicious damage to property contrary to section 339(1) of the Penal Code. The particulars of the charge were that –

“on the 30<sup>th</sup> day of November 2002 at Mbale town, Mbale sub location, Izava location in Vihiga District, within the Western Province, (the appellant) willfully and unlawfully damaged a rear windscreen valued at Kshs. 6,200/- of motor vehicle registration Number KAQ 396 D Toyota Hilux matatu the property of Joseph Wanyugi.”

The trial magistrate sentenced the appellant to 2 years imprisonment.

Three prosecution witnesses testified and the appellant in defence made an unsworn statement and called two witnesses one of whom (DW1) was his father. In his evidence, one of the prosecution witnesses, Joseph Omondi Opiri, a watchman, PWIII saw the appellant at 1.00 a.m. on 30.11.2002 pick a stone and hit the rear windscreen of motor vehicle reg. KAQ 396 D which he was guarding. He chased him. He blew a whistle as he gave chase. He knew the appellant. He had seen him approach. He thought he was drunk. He caught up with him. The appellant started screaming. His house was nearby. His parents and brother came out of the house. PWIII explained to them what had happened. PWIII woke up the complainant who ostensibly lived in the shop premises. The two reported the matter to the

police. The two witnesses who were called by the appellant confirmed that PWIII used to work as a watch man and guarded vehicles outside the shop. They further confirmed that PWIII had pursued the appellant on that night regarding the smashing of the said windscreen. DW1, the father of the appellant who is recorded to have been very reluctant to testify, stated that the watchman was accusing his son of having broken the vehicle.

In his Petition of Appeal, the appellant submitted that the offence was committed at night and that no identification parade was held, and that the prosecution evidence was contradictory and the case was not proved beyond any reasonable doubt.

The evidence clearly established that the appellant was not in his house sleeping contrary to what he alleged in his unsworn statement. His own father heard him screaming outside. His house had not been broken into by the watchman PWIII nor was he removed from his house by PWII who was accusing him of having damaged the motor vehicle. If it had, he and his parents would have lodged a complaint. DWIII, one Harmen Manyeni, heard the Appellant's mother scream saying her son had been arrested.

Although he alleged that he was being framed, the appellant did not state the motive why the watchman would wish to frame him.

In his judgment, the trial magistrate rightly found the appellant guilty although contrary to what the trial court indicated, the appellant had not admitted what the prosecution witnesses had said in evidence. Although it was at night, the watchman, PWIII, saw the appellant with the help of his torch. Moreover, he chased him up to outside his (appellant's) house. If there were any lingering doubts about the appellant's identity, they were cleared when PWIII caught up with him outside his house where both his parents were.

A finding of guilty on the part of the appellant was proper as the evidence adduced established the guilt of the accused beyond any reasonable doubt. The conviction was based on sound evidence. It was proper.

As regards sentence, the two years imprisonment was mild. I see no reason to interfere with it. The Petition of appeal has absolutely no merit. It is dismissed.

Dated at Kakamega this 4<sup>th</sup> day of March, 2005

G.B.M. KARIUKI

J U D G E