

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL 12 OF 2004

**(From original conviction and sentence of the Principal
Magistrate's Court at Kericho in Criminal Case No. 679 of 2004 –
Ombayo SRM**

JOSEPHAT KIPLANGAT KORIR APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant, Josephat Kiplangat Korir, was charged with arson contrary to **Section 332(a)** of the **Penal Code**. The particulars of the charge were that on the 2nd February, 2004 at Kapkegoi Village, Kericho District, the appellant willfully and unlawfully set fire to a building, namely a dwelling house belonging to Samuel Kipkorir Soi valued at Kshs.10,000/-. When the appellant was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was sentenced to serve six years in prison. Being aggrieved by the said sentence, the appellant appealed to this court.

In his petition of appeal, the appellant reiterates that he did not wish to challenge his conviction. He however pleaded with this court to reconsider and review the sentence that was meted out on him. He stated that he was twenty two years of age and an only son to parents. He stated that he was remorseful and in the one year and seven months that he has been in prison he had learned his lesson and would not be repeat offender, if released. At the hearing of the appeal, the appellant, who was unrepresented, repeated the said contents of petition of appeal. He added that he had received Artisan training while in prison and would use the skill gained to be a useful member of the society. The parents of the appellant (including the father who was the complainant in the case) indicated to this court that they had forgiven their son. Mr. Koech, Learned State counsel did not have any submission to make in respect of the plea made by the appellant. He left the issue as regard sentence to the court.

I have considered the submissions made by the appellant. As stated at the earlier part of this judgment, the appellant is not appealing against this conviction. Indeed he reiterates that he committed the offence but was very remorseful. The house that was burnt by the appellant belonged to his father, the complainant. He has indicated to the court that he had forgiven the appellant. The appellant's mother was also present in court. The appellant's appeal is basically on sentence. He pleads that the sentence that was meted out to him was too harsh in the circumstances. He has told the court that he is reformed and would not commit crime again. He told the court that he burnt his parents' house in a drunken state after he had been irked by his parents refusal to give him money to purchase clothes.

After considering all the circumstances of this case, I do hold that the appellant has been sufficiently punished. He appears to be remorseful. The one year and seven months that he has been in prison seems to have made him realize the folly of his action. I believe he is now ready to be a useful member of the society. The plea by his parents has also been considered by this court. I therefore find that his appeal on sentence has merit. I therefore set aside the sentence of six years imprisonment imposed on the appellant by the trial magistrate. This court substitutes the sentence by commuting the sentence to be served by the appellant to the period already served. He is therefore set at liberty and released from prison unless otherwise lawfully held.

DATED at KERICHO this 28th day of September, 2005

L. KIMARU

JUDGE