

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.259 OF 2003

(From original conviction and sentence in criminal case No.557 of 2003 of the SRM's court at Oyugis.)

PETER ODHIAMBO NYAGOA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT:

Appellant was convicted by SRM Homa Bay for the offence of malicious damage to property c/s 339(1) Penal Code. He pleaded guilty and was sentenced to three years imprisonment. He appeals against the sentence.

In meting out the sentence the magistrate noted that the offence was serious and the value of the boat was shs.100,000/=. Indeed this was so. Still a sentence of 2 years imprisonment was excessive. Appellant pleaded guilty. He was a first offender and pleaded for leniency. The facts did not disclose whether the two boats were completely destroyed. Infact appellant was said to have been found sleeping in one of them. I therefore set aside the sentence of two years imprisonment and substitute it with that of 12 months imprisonment. It is so ordered.

**KABURU BAUNI
JUDGE
23/6/04**

Delivered on 23rd June 2004. Mr. Kemo for state.

**KABURU BAUNI
JUDGE**