

IN THE HIGH COURT OF KENYA
AT KISII
CRIMINAL APPEAL NO.326 OF 2003

(From original conviction and sentence of the Senior Resident Magistrate's Court at Kilgoris in Criminal Case No.140 & 1034 of 2003 – S. B. A. MUKABWA ESQ., - S.R.M)

JULILUS KERANGAS OLE YASI APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGMENT

Appellant was convicted on 29th September 2003 by S.R.M. Kilgoris on two counts the first of assault causing actual bodily harm c/s 251 Penal Code and the second of arson c/s 332(a) Penal Code.

The Court asked for a probation report which when presented was favourable. Appellant was placed on 12 months probation on 13/10/03. However on 12/11/03 the probation officer made an application for the order to be revoked on the ground that accused was convicted on another offence thus breaking the probation order. The order was considered and he was sentenced to 18 months imprisonment on count 1 and 6 years imprisonment on count 2. He now appeals against the sentence which he submits was harsh and excessive.

Though appellant breached the probation order court was not told when he committed the subsequent offence.

Sentence of 18 months and 6 years was excessive. The court did not say why it chose to give such sentence. When convicted he was a first offender. He mitigated to be the sole breadwinner of the family. These facts did not change.

I therefore set aside the sentence of 18 months imprisonment and 6 years imprisonment imposed on Counts 1 & 2 respectively and substitutes it with one of one year imprisonment on each count to run concurrently.

It is so ordered.

Delivered at Kisii on 6th October 2004.

KABURU BAUNI
JUDGE.