

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.310 OF 2000

**(From original conviction and sentence in Criminal
Case No.747/95 of the Senior Resident Magistrate's**

Court at NAROK -S. K. KOROS (R,M,)

SAMWEL ABUKA NYABONDO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant has appealed against the sentence imposed upon him by the Narok RM'S Court in Criminal Case No.747/95. He was sentenced in five counts to a fine of Kshs.5000/- each in default 15 months imprisonment each to run consecutively. That brought the cumulative sentence to 6 years and 3 months. The charges facing the Appellant were misdemeanours under S.339(1) of the Penal Code. His co-accused paid the fines and were set free.

The State does not oppose this appeal.

I do agree that a sentence of 6 years and 3 months for a misdemeanour committed on the same day is harsh, punitive and excessive. There were six counts of malicious damage to property all committed in the same transaction. I do agree that the Appellant's sentence calls for a review.

I will allow the appeal by ordering that the Appellant be released forthwith unless lawfully held on grounds the sentence already served is sufficient for the charge.

Dated and delivered at Nakuru this 13th day of March, 2003.

JESSIE LESIIT

JUDGE