

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

CRIMINAL APPEAL NO.155 OF 2003

*(From original conviction and sentence in Criminal
Case No.1075/2003 of the Principal Magistrate's
Court at NYAHURURU –K.A. OWUOR*

STEPHEN MBUTHIA NGUNJIRI.....APPELLANT
VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant has through his advocate appealed against sentence. He had been charged with the offence of MALICIOUS DAMAGE TO PROPERTY contrary to Section 339(1) of the Penal Code. He pleaded guilty to the charge and was convicted and sentenced to one years Imprisonment. He appeals against the sentence on grounds that the trial court failed to consider that the value of the property damages was only 645/-, that the Appellant was a first offender and his mitigation. He submitted that the sentence was severe vis avis the offence committed.

The Learned counsel for the State has not opposed the appeal and submits that in fact the trial Magistrate did not consider the principles of sentencing before imposing the sentence. I do agree with both counsels. The Learned trial Magistrate did not consider anything before sentence as the record bears witness. In that he erred. I will allow appeal by setting aside the sentence and substituting one that with, the period already served. The Appellant should be set at liberty unless otherwise lawfully held. Orders accordingly.

Dated and delivered at Nakuru this 5th day of June, 2003.

JESSIE LESIIT
JUDGE