



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA  
AT MOMBASA**

**CRIMINAL APPEAL NO. 428 OF 2000**

**(From Original Conviction and Sentence in Criminal Case No.509 of 2000  
of the Senior Resident Magistrate's Court at Voi – E.N. Maina – S.R.M.)**

**JOSPHAT NZUMU MWACHOKI ..... APPELLANT**

**- VERSUS -**

**REPUBLIC ..... RESPONDENT**

**J U D G E M E N T**

The Appellant JOSPHAT NZUMU was charged convicted and sentenced to serve 4 years imprisonment for the offence of Arson Contrary to Section 332 (a) of the Penal Code. He has preferred an appeal and cited 4 grounds but at the hearing he opted to abandon all save for ground No.3 that the court failed to take into account that he was the first person to arrive at the scene being the nearest neighbour. The evidence before the trial court was that on the material night, the Appellant and the Complainant who had been drinking at the same den had disagreed after which complainant left and went home.

At around 4.00 a.m. the complainant's mother GETRUDE MERCY BOLI (PW1) was asleep in her house a few meters from her son's house when she heard the appellant say he would kill the complainant. She asked him why he had brought matters that had taken place in a drinking den home. At that juncture the complainant awoke due to his mother's screams and she cautioned her son not to come out. The Appellant who was armed with a panga and a gas lighter scared PW1 away with the panga and proceeded to set the house on fire and ran away. Neighbours came out on hearing her screams including the complainant.

At dawn the complainant along with others went to Appellant's house but he was violent and the village headman reported the matter to the police. The police did not go to arrest Appellant for reasons that they had no motor fuel and consequently the complainant went to report to the police.

The appellant gave a sworn defence in which he referred to another case involving his brother and the complainant which had been withdrawn and his arrest. He did not say anything regarding the charge he was facing. The State Counsel opposed the appeal on grounds that the appellant had been identified and spoke to PW2 who knew him very well as well as PW1 who recognized his voice and after he got out of his house saw Appellant running away from the scene.

I have read the record and note that the evidence of PW2 was is that of an eye witness. She not only saw him but spoke to him pleading for her son's life. The complainant PW1, heard the Appellant's voice and saw him running away after setting house on fire. On evaluation I do not see any reason for me to interfere with the conviction. And on sentence, the appellant though a first offender, was not remorseful for such an inhuman act. I do not consider the Sentence to be excessive as had every intention of causing harm to the complainant and indeed said he was to kill him. For the reasons stated, the appeal is consequently dismissed. The appellant shall continue to serve remaining sentence.

Dated and Delivered at Mombasa this 12th day of February, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE