

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

CRIMINAL APPEAL NO. 123 OF 2000

(From Original Conviction and Sentence in Criminal Case No. 620 of 2000 of the Resident Magistrate's Court at Makindu, O. J. Ochako Esq. on 20.7.2000)

10 MUTUA MUSYIMI MULWA :::::::::::::::::::::::::::::::::::::: APPELLANT
VERSUS
REPUBLIC :::::::::::::::::::::::::::::::::::::: RESPONDENT

Coram: J. W. Mwera J.
Appellant not wishing to present
Orinda State Counsel for Respondent
C.C. Muli

J U D G E M E N T

The appellant was charged under S.332 Penal Code in that on 16.7.2000 at Ukuno village, Kathaka, Makueni he willfully and unlawfully set fire to a dwelling house of Penina Musya. He pleaded guilty to the offence and the facts reproduced showed that the appellant who had appeared drunk started the fire that destroyed property worth about Sh.15,000/=. The lower court took what appears a proper plea of guilty. After mitigation the Learned Trial Magistrate handed down a 6 – year term in prison with effect from 20.7.2000.

The appellant filed an appeal pleading that that sentence was harsh and excessive. It ought to be reduced.

The Learned State Counsel thought that the sentence was on a higher side in the circumstances. The appellant was a first offender. The Learned Trial Magistrate did observe that the offence was serious which occasioned loss of much property. He considered a deterrent sentence merited. He cannot be faulted on this. He gave 6 years imprisonment, while S.332 provides for life in prison. The sentence was thus lawful.

But for the fact that the appellant came to the complainant's compound seemingly drunk, this court is of the view that justice will still be served if the lower court sentence is varied a little. Consequently the Learned Trial Magistrate's sentence is set aside and substituted with one of three (3) years imprisonment.

Save for the reduction of the prison term this appeal is dismissed.

Delivered on 13th March 2001.

J. W. MWERA
JUDGE

