



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO. 271 OF 1999**

**(Being an Appeal from Original Conviction and Sentence in Criminal Case  
No.2662 of 1998 of the Chief Magistrate's Court at Mombasa - J. Siganga,  
SRM)**

**GIFT TUMBO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The Appellant was charged with 3 counts, the first one on arson Contrary to Section 332 (a) and the 2nd and 3rd on assault.

He was tried and acquitted of assault. However he was convicted on the first count and sentenced to 5 years imprisonment,

This appeal is against conviction and sentence.

The Trial Magistrate correctly found that the offences were committed at the same transaction. However she found the assault charges not proved because the P3 forms (medical evidence) were not produced and therefore she could not convict without this evidence.

On the facts it is clear that the accused was well known to the complainant and the other prosecution witnesses. He admitted having been employed by complainant and having been sacked by the complainant not in happy circumstances. The prosecution witness heard the accused say he would burn the complainants house and they, (PW.1) heard his voice and set the fire burning, PW.2 said "I climbed upon a ladder and I saw you throw the burning charcoal ---" PW.3 heard the voice and saw through the window.

In view of the earlier relationship of accused and the complainant I am of the view that the prosecution witnesses were telling the truth. The Appellant committed the acts complained of and he offered no defence to the charge. The Trial Magistrate therefore correctly convicted on evidence before her and I do not see any reason to interfere with conviction.

On the issue of sentence the Appellant says it is harsh and punitive. The sentencing in criminal cases is in the discretion of Trial Magistrate and the Appellate court can only interfere if the discretion is wrongly exercised. The punishment for arson is life imprisonment, a sentence of 5 years cannot therefore be said to be excessive or unreasonable. The Trial Magistrate considered that no mitigation statement was offered but the accused was a first offender. In the circumstances it cannot be said that she exercised discretion unfairly.

For the above reasons I dismiss the appeal.

**Dated at Mombasa this 28th Day of August, 2001.**

**J.KHAMINWA**

**COMMISSIONER OF ASSIZE**