



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL APPEAL NO. 97 OF 2016

IBRAHIM MBURU KAMANDE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Appeal from the original sentence in Criminal Case No. 1348 of 2013 at Kigumo

by A. Mwangi, Senior Resident Magistrate, dated 6th December 2016]

JUDGMENT

1. The appellant was adjudged guilty of *two counts of attempted murder* contrary to section 220 (a) of the **Penal Code**. He was also convicted of the offences of *attempted suicide* contrary to sections 226 as read with section 36 of the **Penal Code**; and, *attempted arson* contrary to section 333 (a) of the **Penal Code**.
2. He was sentenced to *ten years imprisonment for the attempted murder*; and, *three years imprisonment for the attempted arson*.
3. Regarding the *attempted suicide*, the learned trial magistrate considered that the period spent by the appellant in *custody* was sufficient punishment. She discharged him under section 35 of the **Penal Code**.
4. The particulars of counts 2 and 3 were that on 8th October 2013 at 9:00 p.m. at Kangari trading centre in Kigumo Sub-county within Murang'a County, he attempted to cause the death of DWN and FMN by setting on fire *Meko Gas* in the house of Anne Njeri Mwangi.
5. The particulars of count 4 were that he attempted to kill himself by setting the *Meko Gas* on fire and locking himself inside. On count 5, the particulars were that he attempted to set fire to the dwelling house of Anne Njeri Mwangi.
6. The petition of appeal challenged *both* the conviction and sentence. However, on 4th February 2019, the appellant *abandoned* the appeal on *conviction*. He *only* challenges the *sentence*. He pleaded for *leniency*.
7. Learned Prosecution Counsel *opposed* the appeal. She submitted that the sentences handed down were too lenient.
8. This is a *first appeal* to the High Court. I have re-evaluated the evidence on record and drawn *my* conclusions. **Njoroge v Republic** [1987] KLR 19, **Okeno v Republic** [1972] EA 32.
9. PW1 was estranged from the appellant. From her evidence, that of PW2 and PW3, it is manifest that the appellant set alight the *Meko Gas* and mattresses in the house of PW1. He locked himself inside the house together with the two children listed above. Were it not for the quick response by PW1 and police officers, it would have been a tragedy.
10. The appellant refused to open the house when ordered by the police. The house was on fire. PW3 (a police inspector) climbed onto the roof, gained entry and put out the fire. The children were crying out for help. At some point, he had to fire a warning shot to scare away the appellant.
11. I have reached the conclusion that the appellant was properly convicted on the *four* counts. In any event, the appellant *no* longer challenges his conviction.
12. Section 354 (3) of Criminal Procedure Code empowers the High Court to "*maintain the sentence, or with or without altering the finding*

reduce or increase the sentence”.

13. In *Macharia v Republic* [2003] 2 E.A 559 the Court of Appeal had this to say on sentencing-

“The Court would not alter a sentence on the mere ground that if the members of the court had been trying the appellant they might have passed a somewhat different sentence and it would not ordinarily interfere with that discretion exercised by a trial judge, unless it was evident that the judge acted upon some wrong principles or overlooked some material factors.”

14. The appellant said in mitigation-

“I ask the court to sentence me like a person who had no knowledge of the offence; and, who was not able to defend himself”

15. The learned trial Magistrate considered that the appellant had *no* previous criminal record. She also considered the mitigation. As I stated earlier, she took into account the *period* spent by the appellant in *custody*. She discharged him on count 4 under section 35 of the **Penal Code**.

16. The offence of *attempted murder* carries a sentence of up to *life*. The sentence of *10 years* was thus reasonable. The other offence of *attempted arson* attracts punishment of up to *14 years*. The learned trial magistrate factored in the time spent by the appellant in *custody*. She only sentenced him to serve *3 years*. All the sentences were to run *concurrently*.

17. I cannot then say that the learned trial magistrate *failed to look at the facts and circumstances of the case in their entirety before settling for the sentences*.

18. The appeal is devoid of merit. It is *dismissed*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 14th day of February 2019.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of-

The appellant (in person)

Ms. Gichuru for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.