



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 55 OF 2018**

**MUSILU MATUKU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal from Original Conviction and Sentence in Mutomo Senior Principal Magistrate's Court Criminal Case No. 31 of 2017 by Hon. S. Ngii (SRM) on 24/05/17)*

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

1. **Musilu Matuku**, the Appellant, appeals against sentence meted out for the offence of arson. The Appellant was taken through full trial, convicted and sentenced to **seven (7) years imprisonment**.
2. The Complainant was his biological mother. In mitigation, he informed the Court that the Complainant had chased away his wives.
3. The social inquiry carried out established that the Appellant disagreed with his mother because of the presence of a step-father in the homestead and accusations that his biological father had been chased away by the Complainant. The Complainant was hence not ready to accommodate the Appellant. The Area Administrator who was conversant with the problem between the Appellant and the Complainant alluded to threats to kill the Complainant by the Appellant.
4. Being an Appellate Court, I must re-consider what transpired in the trial Court and come up with my own conclusion.
5. In the case of **Bernard Kimani Gacheru vs. Republic Criminal Appeal No. 188 of 2000** the Court of Appeal stated thus:

*“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”*

6. **Section 332(a)** of the **Penal Code** provides thus:

*“Any person who wilfully and unlawfully sets fire to—*

*(a) any building or structure whatever, whether completed or not;”*

7. In meting out the sentence, the learned trial Magistrate was of the view that the conduct of the Appellant could not be encouraged in a civilized society which is governed by the Rule of Law.
8. That notwithstanding, the sentence meted out was excessive. In the circumstances, I set aside the sentence imposed and substitute it with **four (4) years imprisonment**. To be effective from the date of sentence by the trial Court.
9. It is so ordered.

**Dated, Signed and Delivered at Kitui this 3<sup>rd</sup> day of December, 2019.**

**L. N. MUTENDE**

**JUDGE**