

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

(CORAM: MAJANJA J.)

CRIMINAL APPEAL NO. 95 OF 2016

BETWEEN

BENARD MUGANDA OPIYO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of Hon. C.A.S. Mutai, PM delivered on 30th September 2016 at the Butere Senior Resident Magistrate's Court in Criminal Case No. 512 of 2015)

JUDGMENT

1. The appellant, **BENARD MUGANDA OPIYO**, was charged, together with others, and convicted of the offence of malicious damage to property contrary to **section 339(1)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars are that on 1st October 2013 at Butere Police Station within Kakamega County he, jointly with others, willfully damaged two police hand cuffs serial No. 05770 and No. 00707 valued a Kshs. 14,000/= property of the Kenya Government.
2. He was sentenced to three years' imprisonment and now appeals against conviction and sentence. At the hearing of the appeal he only agitated his case on the basis that the sentence was manifestly harsh and excessive. He explained that at the time he was sentenced, he was serving a sentence for rape but the sentence was set aside on appeal in *Kakamega HCCRA No. 116 of 2015*.
3. I have reviewed the sentence and I consider the offence serious. However, I note that the previous sentence may have been enhanced by the fact that he had been convicted for an offence for which the sentence was subsequently quashed by the High Court.
4. I therefore set aside the sentence and reduce the same to **two (2) years imprisonment** which shall be effective from **30th September 2016**. The balance of the sentence shall be served under community service. The appellant is ordered released unless otherwise lawfully held.

DATED and DELIVERED at KAKAMEGA this 5th day of April 2018.

D.S. MAJANJA

JUDGE

Appellant in person.

Mr Ng'etich, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.