



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 17 OF 2018**

**MOHAMED ADAN OMAR.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(From the sentence in Wajir Senior Resident Magistrate Criminal Case No. 8 of 2017 by Hon. Mugendi Nyaga (RM))**

**JUDGEMENT**

1. The appellant pleaded guilty to a count of creating a disturbance in a manner likely to cause a breach of peace contrary to section 95 (1) (b) of the Penal Code, the particulars of which are that on the 31<sup>st</sup> December, 2016 in Wajir East Sub-County created a disturbance in a manner likely to cause a breach of peace by threatening to stab Fatuma Alinoor Mumin with a knife. He also pleaded guilty to a charge of malicious damage to property contrary to section 339 (1) of the Penal Code. The particulars of the offence being that on the same day and place, he willfully and unlawfully damaged a water jerican of 10 litres valued at Ksh.300/= the property of Fatuma Alinoor Mumin.
2. He was convicted and sentenced to serve four (4) months imprisonment in Count 1 and four (4) years imprisonment on Count 2. Sentences to run concurrently.
3. He has now come to this court on appeal on sentences. He relied on written submissions and said orally that his father had died in his absence while in prison.
4. Mr. Okemwa for the State submitted that the four (4) years imprisonment for the water jerican worth Ksh.300/= was excessive. He stated that complainant was the mother of the appellant but the appellant appeared to have in rehabilitated in prison.
5. Sentencing is the discretion of a trial court. The sentence of four (4) years imprisonment is lawful for the offence of malicious damage to property. The mother of the appellant stated that he had become a nuisance to her and the magistrate took that into account as well as the prevalence of the offence in Wajir area. Indeed such offences are very common in Wajir area and are usually committed by young men against their parents mostly their defenceless mothers. The appellant has been in custody since 2017 which is about a year now. He pleaded guilty. I have been told that he had been rehabilitated. In those circumstances, I will interfere with the discretion of the trial court on sentencing but reduce the sentence to two (2) years imprisonment as a lesson to the appellant.
6. Consequently, I set aside the sentence of four (4) years imprisonment for malicious damage to property and reduce it to two (2) years imprisonment from the date on which he was sentenced by the trial court. The two sentences will run concurrently as ordered by the trial court.

**Dated and delivered at Garissa this 18<sup>th</sup> day of October, 2018.**

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**George Dulu**

**JUDGE**