



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT SIAYA**

**CRIMINAL APPEAL NO. 20 OF 2016**

**(CORAM: J. A. MAKAU – J.)**

**M O M ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Appellant **M O M** was charged with an offence of **Arson contrary to Section 332 (a) of the Penal Code**. The particulars of the offence are that on the 30th day of July 2013 in Bondo District (at around 0400 hrs) within Siaya County, willfully and unlawfully set fire to a building namely a kitchen house valued at Ksh.14,400 (*fourteen thousand Four hundred*) the property of P A M.

2. That when the matter came up for plea, the substance of the charge and every element thereof being read and explained to the Appellant in Kiswahili language which he understands, he replied in Kiswahili language “Ni Ukweli” meaning it is true. The prosecution gave facts of the case, that on 29.7.2013 the appellant went home and demanded food from his mother but there was none, hence he quarrelled his mother threatening to burn down her kitchen. That at around 4.00 a.m. the complainant was awakened by certain movements. She opened her house door and saw her grass-thatched kitchen on fire as the Appellant was standing by smoking a cigarette. The complainant raised alarm and neighbours came to her rescue but the Appellant prevented them from putting out the fire and as such the whole kitchen was consumed by the fire including all items inside the house. The Appellant was subsequently arrested and charged with the offence. The Appellant admitted all facts are true and the court convicted the Appellant on his own plea of guilty and sentenced him to serve 10 years imprisonment.

3. Aggrieved by the sentence the Appellant lodged this appeal through a petition of appeal dated 22.3.2015 setting out the following grounds of appeal:-

***(a) That he had pleaded guilty to the charges.***

***(b) That he was an orphan currently HIV positive with tender family that depends on him for social support.***

***(c) That he was a first offender who is reforming and has completed Theology classes and currently attending Industry section yet to do his exams.***

***(d) That his mitigation factors be considered and sentence reduced for ease access to assist the vulnerable.***

*(e) That he prayed for orders of habeas corpus*

4. At the hearing of the appeal the Appellant appeared in person whereas Mr. E. Ombati appeared for the State.

5. The Appellant urged the court to reduce the sentence urging that he has reformed for the period he has been in prison of three years, urging at the time of commission of the offence he was drunk and regrets having committed the offence. He promised not to repeat similar offences and added he has stopped taking beer.

6. Mr. E. Ombati, learned State Counsel opposed the appeal urging that the sentence was lawful and reasonable. That the appellant did not mitigate at the trial court. That the offence of arson attracts life imprisonment and that the Appellant deserved a more serious sentence. He prayed for the sentence to be upheld.

7. The Appellant faced a charge of Arson contrary to **section 332 (a) of the Penal Code Section 332 (a) of the Penal Code** provides:-

*“332 Any person who wilfully and unlawfully sets fire to:-*

*(a) any building or structure whatever, whether completed or*

*not, or ....”*

*(b) .....*

*(c) .....*

*(d) a mine, or the workings, fittings or appliances of a mine,*

*is guilty of a felony and is liable to imprisonment for life.*

8. In the instant case I have taken into account that the complainant is mother to the appellant. The burning of the kitchen arose out of the food dispute between the Appellant and his mother. I have also taken into account the Appellants mitigation that he is a first offender, that he is HIV positive, that he is reformed and he committed the offence out of his drankardness status, that he regrets having committed the offence. I have also taken into account the value of the grass-thatched kitchen was Ksh.14,400/= and that it belonged to the Appellant's mother. I have noted that the trial magistrate's sentence apart from the provision of **section 332(a) of the penal code** was greatly influenced by the Appellant's failure to show remorsefulness and failure to give any mitigation in the lower court but failed to consider what provoked the unlawful acts of the Appellant. The court should have also taken into account where accused persons are faced with charges and appear before court for the first time in their life they may tend to become dumbfounded as they are not familiar with court procedures or are stiff scared and based its sentence on the seriousness of the offence, failed to consider the cause of the offence and the relationship between the parties. The Appellant in the instant case submitted that when he was arraigned before the trial court that was his first appearance in court and he was in a state of shock to mitigate or say anything. The Appellant's statement that he had nothing to say and in telling the court to decide on his fate should in view of the above not have been taken as a demonstration that he was not remorseful and that should not have called for stiff sentence. I find that a sentence of ten (10) years for the Appellant having burnt his mother's kitchen herein for failing to be supplied with food though lawful to be harsh and excessive. I agree with the Appellant a lenient sentence ought to have been meted for this offence taking into account the value of the burnt kitchen was Ksh.14,400/=.

**9. The upshot is that the sentence meted against the Appellant is harsh and excessive in view of the value of the burnt house, and the relationship between the complainant and the Appellant being mother and son respectively. The Appellant has served three years since the sentence. I therefore**

**allow the appeal against sentence, the sentence of 10 years is set aside and substituted with sentence of 3 years. This means the sentence served is sufficient to enable the Appellant to be released. I therefore order that the Appellant be released forthwith unless otherwise lawfully held.**

**DATED AT SIAYA THIS 14TH DAY OF JULY, 2016.**

**J. A. MAKAU**

**JUDGE**

**Delivered in Open Court in the Presence of:**

**Appellants in person – present.**

**Mr E Ombati for the State.**

**C.C. 1. Kevin Odhiambo.**

**2. Mohammed Akideh.**

**J. A. MAKAU**

**JUDGE**