



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NANYUKI

HCCRA. NO. 67 OF 2016

AUGUSTIN LEIKAR.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by **Hon. C.N. NDEGWA PRINCIPAL MAGISTRATE** dated 20th July, 2015 in Maralal Principal Magistrate's **Court Criminal Case No. 603 of 2015**)

JUDGMENT

1. **AUGUSTIN LEIKAR** was charged with the offence of **Arson Contrary to Section 332 of the Penal Code Cap 63** before the Principal Magistrate's Court at Maralal. He pleaded guilty and was sentenced to serve 10 years imprisonment. He now appeals against that sentence.

2. The facts to which the appellant pleaded guilty to were that he on 18th July 2015 set on fire two houses. One of the houses that completely burnt together with its contents, valued at Kshs.50,000/- belonged to appellants mother. In Mitigation before the trial court appellant stated, without any details, that he was unwell.

3. Under section 354 (i) (b) of the Criminal Procedure Code,Cap 75 the High Court when hearing an appeal against sentence can either increase or reduce the appellant's sentence or alter the nature of the sentence. But that discretion must be exercised judiciously as was held in the case of **MACHARIA-VS-REPUBLIC (2003)KLR 115**, that is;

*“The court does not alter a sentence on the mere ground that if the member of the court had been trying the appellant, they might have passed a somewhat different sentence.....The court will also not ordinarily interfere with the discretion exercised by a trial judge unless as was held in **JAMES -VS-REPUBLIC (1950)EA 147** it is evident that the judge has acted upon some wrong principles or overlooked some material facts.”*

4. Bearing the above in mind and considering that the maximum sentence for arson under Section 332, cap 63, is imprisonment for life there is no material before this court which can lead this court to reduce the trial court's sentence.

5. It is noted that the appellant in his written submissions before court stated that he is remorseful of the offence and that he has engaged himself in religious activity, whilst in jail and has gained training in carpentry. However in view of what is stated before I hold the same view as the trial court, that appellant

burnt his mother's house and its entire content and it is obvious he is a danger to his mother. Custodial sentence passed by the trial court was commensurate to the offence.

6. The appeal against sentence dismissed.

Dated and Delivered at Nanyuki this 26th October, 2016

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Augustin Leikar

For state: Mr. Tanui

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE