



REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL APPEAL NO. 130 OF 2014

BETWEEN

ISAAC OTIENO OKETCH .....APPELLANT

AND

REPUBLIC .....RESPONDENT

*(Being an appeal from the original conviction and sentence in Criminal Case No. 489 of 2014 at the Principal Magistrate's Court at Ndhiwa, Hon. B.O. Omwanza, Ag.PM dated on 30<sup>th</sup> October 2014)*

JUDGMENT

1. The appellant **ISAAC OTIENO OKETCH** was convicted on his own plea of guilty for the offence of cutting down crops of cultivated produce contrary to **section 334(g)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. It is stated in the charge that on 17<sup>th</sup> October 2014 at Kabodo village in Ndhiwa District, he willfully and unlawfully cut down cultivated produce (sugarcane), the property of John Were Osero. He was sentenced to 3 years imprisonment.
2. The accused accepts his guilt but asks the court review the sentence. He submits that he was driven by anger as a result of a long standing dispute with his neighbour.
3. This is an appeal on the sentence. It is well settled that this court may interfere with the sentence imposed by the trial court if it is satisfied that in arriving at the sentence, the trial court did not take into account a relevant factor or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive (see *Wanjema v Republic [1971] EA 493*).
4. I have looked at the sentencing notes and the learned magistrate placed emphasis on the gravity of the offence in imposing the term of imprisonment. The record does not show that the learned magistrate took into account the fact that the value of sugarcane destroyed was Kshs. 15,750/=, that the appellant was a first offender and that he was remorseful having pleaded guilty. The court did not consider the possibility of a non-custodial sentence particularly in view of the age of the appellant who is about 60 years old.
5. In light of the facts I have outlined, I quash the sentence and substitute it with one year imprisonment. However, the balance of his sentence shall be served under probation. He is set free unless lawfully held.

**DATED and DELIVERED at HOMA BAY this 11<sup>th</sup> day of March 2015.**

**D.S. MAJANJA**

JUDGE

Appellant in person.

Mr. Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director

of Public Prosecutions for the respondent.