REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 116 OF 2011

ANNA JEPKOSGEI TANUI…….APPELLANT

VERSUS

REPUBLIC…….....RESPONDENT

(Being an appeal from the original conviction and sentence in Criminal Case No. 5768 of 2010 Republic v Anna Jepkosgei Tanui in the Principal Magistrate's Court at Eldoret by D. K. Kemei, Principal Magistrate dated 10th December 2010)

JUDGMENT

1. The appellant was convicted on her own plea of guilty for the offence of arson contrary to section 332 of the Penal code. The offence was committed on 25th November 2010 at Kalwal village of Chemoibon location in Keiyo South District within Keiyo/Marakwet County. The appellant was accused of wilfully setting fire to a dwelling house belonging to Samuel Kiptarus Samoei valued at Kshs 21,700.

2. The facts read in court were as follows: the appellant is a sister-in- law to the complainant. On the material day, the appellant was with the complainant taking traditional liquor. The complainant asked for some tobacco from the appellant; the appellant declined. The complainant snatched the tobacco and in the process spilled some of it to the floor. The appellant got annoyed, rushed to the complainant's house and set it on fire. The house was valued at Kshs 21,000. It was razed to the ground. An alarm was raised and some items saved from the fire. The appellant disappeared. A report was made to Kaptagat Police Station. The accused was arrested and charged. The photographs taken at the scene were produced in court as exhibits 1 to 4.

3. When those facts were read to the appellant, she confirmed them to be true. The trial court considered the mitigation offered by the appellant but found that the offence was serious which called for a deterrent sentence. The appellant was sentenced to serve ten years imprisonment.

4. The appellant is aggrieved by the conviction and sentence. The petition of appeal was filed on 12th July 2011. It urges five grounds: that the appellant is illiterate and did not comprehend the proceedings; that there were no eye witnesses to the offence; that the evidence produced by the prosecution was hearsay and insufficient to found the charge; that there was a misunderstanding between the complainant and the appellant; and, that the sentence handed down was too harsh in the circumstances. The appeal is contested by the State.

5. This is a first appeal to the High Court. I have re-evaluated all the evidence on record and drawn my

own conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.

6. I have studied the records of the trial court. On 29th November 2010, the case came up for plea. The court enquired from the appellant the language she understood. The Coram shows the proceedings were conducted in English with Kiswahili interpretation. The appellant pleaded guilty. The appellant never raised any issue relating to the language or proceedings. The case was adjourned on a number of occasions to allow the prosecution to get the facts. On 10th December 2010, the facts were read to the appellant in Kiswahili, a language she understood. Fundamentally, the appellant confirmed the facts were correct. A plea of guilty was entered.

7. I find that the appellant's plea of guilty was unequivocal. The charges and facts were read out to her in Kiswahili, a language she stated she understood. The submission that she is illiterate and did not follow the proceedings is an afterthought. It has no legal foundation. The appellant followed the proceedings. She even mitigated and told the court: *"I was annoyed as complainant always beats me"*.

8. From the facts that I set out above, the appellant, in a fit of anger, ran out to the complainant's house and set it on fire. The disagreement over snuff tobacco or other differences with the complainant did not justify the arson or raise a defence to the charge. Exhibits 1 to 4 clearly show that the complainant's house was razed to the ground. I thus find that all the key ingredients of the offence of arson were established. The appellant was thus properly convicted of the offence of arson contrary to section 332 of the Penal Code.

9. My finding on that ground is sufficient to dispose of this appeal. The other grounds are all negated by the unequivocal plea of guilty. It is a little wee late to now say there were no eye witnesses, or that there was insufficient evidence to convict the accused, or that there were underlying disputes between the appellant and complainant.

10. I would be reluctant to impeach the sentence. Although the appellant was a first offender, the offence of arson is grave. I agree with the trial Magistrate that it called for a deterrent sentence. Under section 332 of the Penal Code, a person who wilfully and unlawfully sets fire to any building is guilty of a *felony* and liable to *imprisonment for life*. The sentence of 10 years imprisonment was thus well within the law. The punishment meted out matches the gravity of the offence.

11. In the result, I find that the appeal is devoid of merit. I uphold the conviction and sentence handed down by the learned trial Magistrate. The entire appeal is dismissed.

It is so ordered.

DATED, SIGNED and **DELIVERED** at **ELDORET** this 2nd day of October 2014

GEORGE KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of

The appellant.

Mr……..for the State.

Mr. Kemboi, Court clerk.