

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPLICATION NO. 180 OF 2012

DORIS WAMUYU MUNGARA APPELLANT

-VERSUS-

REPUBLICRESPONDENT

(From original conviction and sentence in criminal case Number 302 of 2011 in the Chief Magistrate's Court at Gatundu – M/s. Kinyanjui (RM) on 10th April 2012)

JUDGMENT

1. The appellant, **Doris Wamuyu Mungara** was fined Kshs.30,000/= in default to serve (6) months imprisonment for the offence of malicious damage to property contrary to **Section 339(1)** of the **Penal Code**, before the Resident Magistrate Gatundu in **Cr. Case No. 302/11**. It was alleged that on 1st day of July 2011 at Gachangatha village in Gatundu South within the Kiambu county jointly with others not before court, wilfully and unlawfully damaged 4 wooden doors, a ceiling board, 1 main gate, 2 bulbs and bulb holders, 38 pieces of window glasses, all valued at Kshs.40,000/= the property of Mary Mukuhi Thuku.
2. Learned Counsel Mr. Kamata filed an appeal on her behalf citing grounds that the evidence was not sufficient to link her to the offence, and the ingredients of the charge were not proved beyond reasonable doubt. Miss Ngetich the learned state counsel conceded the appeal citing the same grounds advanced by the appellant.
3. I have reassessed the evidence to draw my own inferences and reach my own conclusions. It would appear that a crowd that gathered at the appellant's home, acting on what I can only describe as mass hysteria went to the complainant's house and caused damage to her property. This crowd was propelled by the utterances of a child who was obviously suffering from some mental break down, probably Schizophrenic Paranoia and was in need of medical attention.
4. There is no evidence that the complaint caused the child's illness. **DW2** the appellant's pastor testified that the child had had what he called "demonic attacks" in school and named other persons. There is also no evidence that the appellant sent or caused the crowd to attack the complainant's property. Both women were therefore victims of an overzealous crowd which needed someone to blame for a delicate problem which they could not comprehend.
5. I therefore respectfully agree with Mr. Kamata that the evidence adduced by the prosecution was not sufficient to link the appellant to the offence and that the ingredients of the charge had not been proved beyond reasonable doubt. Miss Ngetich was quite in order to concede the appeal.

Reasons wherefore the appeal is allowed.

SIGNED DATED and **DELIVERED** in open court this **1st** day of **October 2013**.

L. A. ACHODE

JUDGE