



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

**CRIMINAL APPEAL NO.50 OF 2012**

**[ Being an appeal from the Judgment of Hon.Kyambia (SRM) vide Bungoma Chief Magistrate's Court criminal case No. 941 of 2012 ]**

**RODGERS WANGILA WEKESA ..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**JUDGMENT**

The Appellant **RODGERS WANGILA WEKESA** was convicted of the offence of arson on 27th January 2012 and sentenced to serve 5 years imprisonment by Senior Resident Magistrate's Court Bungoma. Being dissatisfied with both conviction and sentence, he preferred this appeal.

He listed 6 grounds in his petition. He thereafter submitted orally in support of his appeal. Before he commenced arguing his appeal, Ms. Nyamweya State Counsel cautioned the Appellant that she would urge the court to enhance the sentence if he proceeded with this appeal.

Briefly, the prosecution case is that on the 21st day of May 2010 at Aidomoru sub-location, Aboloi location in Teso North District the Appellant willfully and unlawfully set fire to a dwelling house belonging to **SILAS MUKHEBI WEKESA**. The prosecution called 6 witnesses to prove his case. The complainant is a brother to the appellant.

The complainant (PW1) told the court that he was in the home of his 2nd wife when he heard screams at about midnight. He came out and saw fire in his first home. He went to the scene and found his first house was on fire. PW2, whose house was burnt said she saw the accused set the house on fire. The Appellant then ran away. The Appellant was later arrested by a village elder.

PW3 is a brother to the Appellant. He told the trial court that on 21st May 2010 at 6 p.m he found the appellant fighting with one Moffat. He tried to separate them but the appellant attacked him. The Appellant warned him that he would burn all the houses in the thome. The appellant ran away and immediately set his own house and PW3's house ablaze. He later returned at night and set on fire the house of Agnes and Evans. While cross examinaing this witness, the appellant did not challenge the evidence that he set his own house on fire nor PW3's house. The appellant did not also deny issuing the threats of burning the houses to PW3.

PW4 APC John Kangethe confirmed receiving a report from the area Assistant Chief on same date at 7 p.m of burning houses in Aldomoru. They arrested PW3. At 11 pm another call came that houses were being burnt. He visited the scene. He re-arrested the Appellant on 22.5.2010 from members of the public. PW5 corroborated the evidence of PW3 about the fight between Moffat and the Appellant. He stated that both of them were drunk.

The Appellant gave unsworn evidence and stated that on 22.5.2010 while coming from his step-mother's home in Kocholia, he was arrested and taken to Aboloi AP line and detained. He said nothing about the activities of 21st May 2010. Although the burden is upon the prosecution to prove their case, having heard the evidence of the prosecution case, the appellant opted to say nothing to challenge it.

The trial court evaluated this evidence. Undoubtedly several houses were set on fire on 21st May 2010 in the home of the Appellant. The Appellant and the other witnesses are one family. The Appellant did not deny burning his own house. He did not deny having a fight with a Moffat or making statements about threats to burn all the houses in their home. I am satisfied the trial court correctly evaluated the evidence and reached a safe conviction.

I find the appeal as lacking in merit. In the result I uphold the conviction. The sentence meted out was very lenient and I see no reason to interfere with it. The Appellant shall complete the sentence meted out. The appeal is hereby dismissed.

**Dated and Delivered in open court this 7th day of November 2013.**

**A. OMOLLO**

**JUDGE.**