

Kichikiro v Republic

High Court, at Mombasa June 4, 1992
Omolo J

Criminal Appeal No. 37 of 1992

June 4, 1992, **Omolo J** delivered the following Judgment.

From the recorded evidence it is clear that Paul Kichikiro Meliki (DW.2), the father of the Appellant, sold his piece of land in 1969 to the complainant Fredrick Ngaluma (PW.2). The land was sold for a miserable sum of Shs.400/- but it is not to be forgotten that in 1969 when the sale took place, that was quite a considerable sum. The Appellant was apparently not present at home when the sale took place, but it is clear from the evidence that PW.2 eventually had himself registered as the owner of the land. The Appellant was obviously bitter about the sale and the father is also supporting him. The two of them clearly resent the sale to PW.2 and if they could they would have that sale set aside. The complainant however, has developed the land and planted various crops thereon. It is clear from the evidence that the Appellant went to the land and cut down all the crops that were on the land and burned them. Joyce Ngaluma, (PW.3) and Pili Ngaluma (KPW.4) did not actually see him cutting down the crops but they found him in the shamba and he had a panga with him. They saw the crops lying on the ground and the appellant threatened them not to step into the shamba. The appellant denied that he cut down the crop and he would appear to have been saying that even if he did so the land belongs to him. Like the magistrate I am satisfied that he cut down the complainant's plants and it is not correct that the land belongs to him. The land cannot belong to him because his father sold it way back in 1969. The appellant was rightly convicted on the charge of malicious damage to property contrary to section 339(1) of the Penal Code, and I dismiss his appeal against the conviction.

The magistrate sentenced him to 18 months imprisonment, but in the circumstances I do not think that a long custodial sentence would really help in the matter. I accordingly reduce the prison term to one of 9 months imprisonment to run from the date when the appellant was convicted and sentenced by the magistrate.