



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
CORAM: SHAH, BOSIRE & OWUOR, J.J.A

CRIMINAL APPEAL NO. 62 OF 2001

BETWEEN

JOHN KIMANI NJOROGE.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a conviction and judgment of the High

Court of Kenya at Nyeri (Juma, J) dated 27th December, 1999

in

H.C.C.R.A. NO. 165 OF 1999)

JUDGMENT OF THE COURT

The appellant's first appeal to the superior court against his conviction and sentence on a charge of arson contrary to Section 332 (a) of the Penal Code , was, on 27th December 1999, summarily rejected by the Superior Court (Juma, J) under Section 352(2) of the *Criminal Procedure Code* . This appeal is against that rejection.

The appellant in his petition of appeal to the superior court raised seven grounds of appeal, all which attacked findings of fact by the trial magistrate. Section 352(2) , aforesaid, provides as follows:

*“Where an appeal is brought on the ground that the conviction
is against the weight of the evidence , or that the sentence is excessive,
and it appears to a judge that the evidence is sufficient to support the
conviction and that there is no material in the circumstances of the case
which could raise a reasonable doubt whether the conviction was right or*

lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the Judge certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground for complaint.”

Juma, J having issued a certificate under Section 352(2) above, the appellant contends that his case did not fall within the ambit of that section and has asked us to intervene. In his homemade memorandum of appeal he attacks the credibility of some witnesses and has alleged paucity of evidence against him. However, on our own evaluation of the evidence, it is clear that the appellant was identified as the person who set on fire a house belonging to *Kimeko Kimani* on 1st January, 1999 at about 9 pm, violently restrained the complainant’s neighbours who responded on hearing screams calling for help to put off the fire from putting off the fire, and after ensuring that the house had burnt down escaped. The appellant is alleged to have cut *Kamande Muchiri*, with a panga as he tried to put off the fire.

In his defence the appellant admitted he assaulted some people including *Kamande Muchiri*, but contended that he did so because he found them, among other people, beating his wife. He denied burning the complainant’s house and stated that it was his house which was burnt by the mob which was beating his wife. He did not say why his wife was being beaten by the mob.

Neither the appellant’s petition of appeal nor the proceedings before the trial court raise any points of law nor can it be said that the evidence against the appellant, as a whole is insufficient to support the charge of arson against the appellant. Clearly, therefore, this was a proper case for the rejection of the appeal under Section 352(2) of the Criminal Procedure Code. In the result the appellant’s appeal is without merit and is accordingly dismissed.

Dated and delivered at Nyeri this 1st day of November, 2002.

A.B. SHAH

.....

JUDGE OF APPEAL

S.E.O. BOSIRE

.....

JUDGE OF APPEAL

E. OWUOR

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR