



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**CRIMINAL APPEAL NO 130 OF 2014**  
**BONFACE NAMA ACHANDO.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**[Appeal from Original Conviction and Sentence From WINAM PM'S COURT; B. KASAVULI –  
Ag PM**

**In Criminal Case No.418 OF 2013]**

**J U D G M E N T**

1. The appellant and his co-accused were charged with the Offence of Robbery with Violence Contrary to Section 896 (2) of the Penal Code.

The particulars of the offence were that on the 16th day of May 2013 at Kondele area within Kisumu County jointly with others not before court robbed **MUDONDO GORRET NABOZO** of her mobile phone make Forme valued at Kshs.5,500 her Ugandan passport, One handbag, one pair of uniform and cash Kshs.300 all valued at Kshs.20,500 and at immediately before or immediately after the time of such robbery wounded the said **MUDONDO GORRET NAGOZO**.

2. The second count was Malicious damage to property contrary to Section 339(1) of the Penal Code.

3. The particulars of the offence were that on the 16th day of May 2013 at Kondele area within Kisumu County jointly with others not before court willfully and unlawfully damaged the mobile phone make Utstorcom valued at Kshs.5000 the property of **MUDONDO GORRET NABOZO**.

4. The appellant after full trial was convicted to 7 and 2 years respectively, the trial court having reduced the first count to simple robbery. The appellant being dissatisfied has filed this appeal citing several grounds. Before dealing with them its good at this juncture to summarise the evidence as presented at the trial court.

5. **PW1 MUDONDO GORRET NABOZO** told the court that she was coming home from her place of work on the material day at around 10 pm. When she reached her gate, she saw 4 people whom she knew as they stayed in the same estate. The said persons who included the appellant pounced on her and hit her wherein she lost unconsciousness. When she regained her senses she was at the shops corridor and bleeding. She went to the house and found her sister. Her handbag and her phone had been taken away. She was later taken to New Nyanza General Hospital and treated. She said that she knew her assailants as her neighbours and that she was able to recognise them as there were security lights at the gate.

**6. PW2 GEORGE MWITA** the Clinical Officer filled the P3 form on 17/5/13. The following injuries were sustained by the complainant:

**a. left swollen eye which was bruised and reddened.**

**b. Swollen and tender left cheek**

**7. PW3 FAITH NAMBUYE** was called by one Sharon, a sister to PW1 who informed her of the incident.. She then phoned a police informer who told her to report at the police station. She went to Kondele police station and made the report. She checked the complainant the following morning in her house whom she found was in great pain. PW1 told her that she knew her assailants. She accompanied the police when they went to arrest them. She was also present when PW1's phone was recovered at the scene.

**8. PW4 ROSELYNE NANJALA** was the investigating officer. She said that after the report was booked she went to the scene and began her investigation. Accompanied by her colleagues they arrested the appellant in his house. She produced the damaged phone as part of the exhibit.

**9.** When put on his defence the appellant said that on the material day after leaving his place of work, he went to his girlfriend's house where he spent the night. At around 6 a.m. he heard some noise and when she opened the door after being knocked his co-accused came in first accompanied by police officers. He was then arrested but his girlfriend was released. He denied the charge.

**10.** Having heard the appellant and read his submissions as well as the opposing submission by the learned State Counsel, the issue coming out of the appellant's petition dated 15.9.2014 can be reduced as hereunder:

**1. whether the appellant was positively identified.**

**2. Whether the evidence as presented pointed to the guilt of the appellant.**

**11,** On the question of identification the complainant stated that there were security lights at the gate and therefore was able to identify the assailants. Although she stated to the clinical officer that there were 4 people, that discrepancy does not oust the fact that the complainant was attacked by more than one person. Equally the complainant stated that she knew her attackers who were neighbours and infact had known, the appellant for more than 2 months.

**12.** Based on the above set of facts I am fully convinced that its the appellant who participated in the robbery together with his colleagues. I do not find any sufficient reasons to suggest that the complainant was mistaken. In any case the complainant said that even after seeing the persons she continued talking over her mobile phone as there was no apparent apprehension. In my mind the complainant was in such a relaxed mood that there was no reason to fear or at all.

**13.** As to the question of whether the matter was fully investigated and the relevant witnesses called I find that the prosecution did its home work well. The mobile phone which was already damaged was recovered. The witnesses who testified gave sufficient evidence which the appellant could not oust, in his defence. In fact his defence was a mere general denial as the complainant clearly knew where he stayed.

**14.** The other issue to reckon is that the complainant clearly told PW3 and one Sharon who her assailants were. The report made to the police station at Kondele was consistent with what had transpired.

**15.** In the premises, I do not find this appeal meritorious, the same is dismissed.

**Dated, signed and delivered this 23rd March, 2016**

**H. K. CHEMITEI**

**J U D G E**

**IN THE PRESENCE OF:**

.....for state

.....for appellant