



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CRIMINAL APPEAL NO.14 OF 2015**

**PATRICK MUNENE CHEBERE ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*( From the original conviction and sentence in criminal case No. 1451 of 2012 of the Chief Magistrate's Court at Meru by Hon. D.O Onyango – Senior Principal Magistrate)*

**JUDGMENT**

The appellant, **PATRICK MUNENE CHEBERE**, was charged with an offence of robbery with violence contrary to section 296 (2) of the Penal Code.

The particulars of the offence were that on 28<sup>th</sup> September 2012 at Ruiru market, Buuri District of Meru County jointly with another not before court while armed with a G3 rifle and a panga robbed **JANEFFER KARURU** of cash Kshs 3300/= and at or immediately before or immediately after the time of such robbery used actual violence to the said **JANEFFER KARURU**.

The appellant was found guilty of the offence and sentenced to serve seven years imprisonment. He now appeals against both conviction and sentence.

The appellant was in person. He raised five grounds of appeal. The grounds can be summarized as follows:

1. That the learned trial magistrate erred in law and in fact by failing to note that the prosecution evidence was full of contradictions.
2. That the learned trial magistrate erred in law and in fact by failing to consider the appellant's defence.

The state opposed the appeal through Mr. Odhiambo, the learned counsel.

The facts of the case were briefly as follows:

While the complainant was in her bar serving patrons, the appellant in company of another entered and robbed her. She recognized him for he was her customer.

In his defence the appellant contended that he was framed up due to some differences he had with the complainant.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO Vs. REPUBLIC 1972 EA 32**.

The key witnesses in this case were Janeffer Karuru (PW1) and Fridah Makena (PW2). Both were in the bar where the robbery took place. Their description of the sequence of events is similar. Both testified that they knew the appellant by name. They also said he had not concealed his face in any way and that prior to the robbery, he had bought cigarettes in the same bar that same evening.

This was a case of recognition. In his defence the appellant bolstered the fact that the complainant knew him prior to the incident. This is when he talked of a grudge.

The learned trial magistrate did consider the defence of the appellant before dismissing it and rightly so. This defence was clearly an afterthought for he never confronted the complainant with these facts during cross examination.

The ingredients of the offence of robbery under section 296 (2) of the Penal code are as follows:

- (a) If the offender is armed with any dangerous or offensive weapon or instrument,
- (b) or is in company with one or more other person or persons, or
- (c) if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person.

If any one of the three ingredients is proved beyond any reasonable doubts, then the offence is proved.

In the instant case, all the three ingredients were proved.

The upshot of the foregoing analysis is that the evidence on record was overwhelming against the appellant. His appeal is therefore dismissed.

**DATED at Meru this 19<sup>th</sup> day of December, 2016**

**KIARIE WAWERU KIARIE**

**JUDGE**