



REPUBLIC OF KENYA

High Court at Machakos

Criminal Appeal 96 of 2006

(Appeal against conviction and sentence in Machakos CM Criminal Case No. 3180 of 2005 – H. A. Omondi, CM)

JOHN MBUVI KAVOI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

1. The Appellant was charged with, tried for and convicted of **simple robbery** contrary to **section 296(1)** of the **Penal Code**. It was alleged that on 1st December 2005 at Eastleigh Area in Machakos District within Eastern Province he robbed one **Joseph Musyoki** of cash KShs 500/00, a mobile phone make Samsung A400, one belt and a wrist watch make Arsenal, all valued at KShs 10,500/00, and that at or immediately before or immediately after the time of the robbery he threatened to use actual violence to the said complainant.

2. The Appellant was awarded the maximum penalty provided for by the law, **fourteen (14) years imprisonment**. He has appealed against both conviction and sentence. His grounds of appeal (rephrased for clarity)include -

- (i) That the conviction was against the weight of evidence.
- (ii) That there was no proper identification of the Appellant.

3. I have considered the written submissions presented by the Appellant. He was unrepresented. I have also considered the submissions of the learned State Counsel for the Respondent. Finally, I have read the record of the trial court, including the judgment.

4. The robbery took place at about 10.00 pm at night. Although the complainant testified that the Appellant took him to a place where there was light by which he was able to properly observe the Appellant, there was no evidence of the kind of light or the intensity thereof, or its distance or direction from the complainant and the Appellant.

5. Although the complainant identified the Appellant at Machakos Police Station, learned Counsel conceded that no proper identification parade was ever conducted.

6. The Appellant was found with a wrist watch which the complainant identified as belonging to him, and stolen from him during the robbery. But it had no special mark by which he identified it. He only stated that he had had the watch for a long time.

7. The evidence of recovery of recently stolen goods was thus tenuous and could not lend

credence to the identification of the Appellant which itself was also tenuous.

8. I am not satisfied that the Appellant's conviction is safe. I will allow the appeal, quash the conviction and set aside the sentence imposed. The Appellant shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

9. The delay in preparation of this judgment is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have now fully regained my health.

DATED AT NAIROBI THIS 29TH DAY OF AUGUST 2012

H. P. G. WAWERU
JUDGE

**COUNTERSIGNED AND DELIVERED AT MACHAKOS THIS 28TH DAY OF SEPTEMBER
2012**

ASIKE-MAKHANDIA
.....
JUDGE