



REPUBLIC OF KENYA

High Court at Embu

Criminal Appeal 137 of 2009

ANTHONY MURIITHI NJUE .....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(Being an Appeal from the Conviction and Sentence by M.W. Wachira Chief Magistrate Embu in Criminal Case No. 108 of 2008 on 26<sup>th</sup> June 2009)*

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

The Appellant was charged before Chief Magistrate's Court Embu with the offence of Robbery contrary to Section 296(1) of the Penal Code. The particulars in the charge sheet were as follows:-

**ROBBERY CONTRARY TO SECTION 296 (1) OF THE PENAL CODE**

***ANTHONY MURIITHI NJUE: On the 29 day of January 2008 at Embu township, Municipality Location in Embu District within Eastern Province, jointly with others not before court, robbed JANE WANGECHI MBUCI of Kshs. 18,000/-, one jacket, one Arimis milking jelly 50 gms, one necklace, one Zoe body lotion, one fair and lovely lotion, one packet tooth pick, one tooth paste and personal documents all valued at Kshs 19,060/- and at or immediately before or immediately after the time of such robbery threatened to use actual violence to the said JANE WANGECI MBUCI.***

He also faced a 2<sup>nd</sup> count of being in possession of Narcotic drugs contrary to section 3 (a) as read with section 2 (b) of the Narcotic drugs and Psychotropic Substance Control Act No. 4/94.

He pleaded not guilty to both counts and the matter proceeded to full hearing. He was convicted and sentenced to 4 years and 1 year imprisonment respectively. The court ordered that the sentences run concurrently. The appellant being aggrieved with the judgment appealed against the conviction and sentence. He raised the following grounds:-

1. *That appellant pleaded not guilty to the charge.*
2. *That the learned trial magistrate erred in law and fact in convicting the appellant on single evidence.*
3. *That the learned trial magistrate further erred in law and facts in convicting the appellant on*

- the evidence of mode of light in use which was unconvulsive.*
4. *That the learned trial magistrate erred in law and fact by convicting the appellant while the prosecution side was adduced by many contradictions.*
  5. *That the learned trial magistrate erred in law and fact by failing to put due consideration in my defence in addition, reasons of its rejection was not disclosed as stipulated by the provisions of section 169 (1) Criminal Procedure Code.*

However when the appeal came for hearing he abandoned his appeal on conviction saying he was satisfied. He asked the court to consider the period he had been in prison and set him free.

Mr. Onyango the learned State Counsel submitted that he was not going to oppose the appeal but since the appellant had asked the court to look into the issue of sentence only the court should do so. This being a first appeal I am enjoined to re-evaluate and re-consider the evidence adduced in the lower Court and come to my own conclusion. I also do not lose sight of the fact that I never saw nor heard the witnesses.

Refer -

The Prosecution case in brief was that PW 1 and another were walking to Dallas estate from the Meru bus stage. They passed near Kubukubu bar and passed-by some boys shouting there. After going for a short distance PW 1 just felt a slap on her face. Her green jacket was pulled down and she fell. Her companion (Walter) had also been knocked down. They were assaulted. From the light of a passing by motor vehicle she managed to identify the appellant.

The attackers robbed her of her handbag containing Kshs.18,000/- plus other items as mentioned in the charge sheet. The appellant wore a cream shirt. They were assisted and as they stood at Dallas junction they saw 2 of the attackers emerge from a path they had taken. They chased after them using a motor vehicle and managed to arrest the appellant who was even wearing her jacket/jumper and was in the cream shirt. At Embu police station the appellant was searched and found to have some of the items she was robbed of e.g Exhibit 1 – 3. he was also found with 2 rolls of bhang (exh. 4). PW 2 and PW 3 both police officers confirmed the recoveries. In his unsworn defence the appellant did not deny having been found in possession of exhibit 1 – 3. He said they belonged to his wife who had managed to run away as they were being chased. He denied the charges.

The learned trial magistrate analyzed all this evidence and came to the conclusion that the appellant committed the offence. PW 1 was the only identifying witness but the search that revealed the items was done at the police station. The items were positively identified by PW 1. The recovery of these items corroborated PW 1's evidence. He was also arrested just a few hours after the incident. The appellant laid no claim to them. Infact he said exhibit 2 and 3 belonged to his wife who never came to confirm or deny on his behalf.

The learned trial Magistrate well considered the evidence and came to the correct conclusion and I find no reason to make me fault her decision. And at the hearing of the appeal the appellant abandoned the appeal on conviction. He stated that he was satisfied with it. The conviction is therefore upheld.

Coming to the issue of sentence the appellant wants this court to interfere with it. The maximum sentence for robbery under section 296 (1) is 14 years imprisonment. The appellant was sentenced to 4 years imprisonment which a lawful sentence. He has not given any reason or any special circumstances to warrant the reduction of the sentence. The complainant herein did not recover all the items stolen from her especially the cash money. The appellant was sentenced on 8/7/09 for a period of 4 years as the two sentences were to run concurrently. Even if there is no remission there is no way his sentence can run upto March 2014 unless there is another issue to it. From this calculation its clear that he has done 39 months out of the probable 48 months sentence. He is therefore due for release on 7/7/13 and not March 2014.

My finding is that the 39 months he has served should be a good lesson for him. I therefore allow his

appeal on sentence only and reduce it to the period already served. Appeal on conviction is dismissed.

The appellant to be released forthwith unless otherwise lawfully held.

**DATED AND DELIVERED AT EMBU THIS 18<sup>TH</sup> DAY OF OCTOBER, 2012.**

**H.I. ONG'UDI  
J U D G E**

**In the presence of:-  
Ms. Macharia for State  
Appellant  
Njue CC**