

pulled the strap of his mobile phone and PW1 held onto the phone. PW1 screamed for help but the Appellant managed to take the phone before court orderlies PW2 and PW3 came to his rescue. The Appellant was arrested immediately and charged with the offence. The case was heard the same day. The phone was recovered from the accused immediately. PW1 gave his line as number 073715547 and identified his phone in court.

PW2 P. C. Fred Kosgei was on duty at Webuye Law Courts cells on the material day. He told the court that around 8.00 a.m he was with his colleague CPL Kiptum when he heard an offender in the cells call for help. He went there and found PW1 who was complained that the Appellant had just stolen his mobile phone. PW2 immediately searched the Appellant and recovered the phone Nokia 1100 which PW1 identified as his stolen property. The matter was referred to the Officer Commanding Webuye Police Station who investigated the same and charged the Appellant with the offence.

PW3 the investigating officer testified that he was then attached to Webuye Police Station. This case was reported at the station and referred to him for investigation. He recorded the statement of witnesses and kept the exhibit Nokia Phone 1100 in safe custody. He produced it as an exhibit. PW3 also received the Appellant who was the suspect. After investigations, he charged him with the offence.

When the Appellant was called upon to give his defence, he said:

“I refuse to say anything. I do not care if I am jailed for 10 years.”

The trial court found the evidence of the complainant un rebutted and credible. He said:

“The evidence of the prosecution is forthright, consistent and irrefutably shows that the Appellant took the phone of the complainant without his consent.”

The offence took place during daylight at 8.00 a.m. There was no possibility of mistaken identity. The accused and complainant were together in the cells. PW1 told the court that as soon as he was taken to the cells the appellant rushed at him and searched his pockets before he stole the phone. PW1 held onto his phone but the Appellant overpowered him and took it. The complainant had an opportunity of seeing the Appellant well and could not have mistaken him for another person. PW2 heard the complainant screaming and rushed to rescue him. He recovered the phone from the Appellant immediately after the theft. The Appellant opted to say nothing which is within his rights under section 211 of the Criminal Procedure Code. The trial court in its judgment said that the rights of defence were explained to the Appellant and he opted to keep quiet. The argument by the Appellant that he was not given a chance to defend himself has no basis. It was his choice to keep quiet.

The Appellant says the case was fabricated against him and that PW1 was coached by police officers on what to say. I do not buy this argument. PW1 and PW2 who are the key witnesses did not know the Appellant in order to fabricate the case against him. The Appellant did not give any reason why the two witnesses would have framed the case against him. In his petition, the Appellant says nothing was recovered from him. The evidence of PW1 and PW2 was overwhelming and dislodged this denial. The Appellant ought to have defended himself during the trial if the case was framed against him. I find that the prosecution’s evidence was direct and watertight. The conviction was therefore safe. The sentence of four (4) years imprisonment was within the law. The maximum sentence under section 279 (a) of the Penal Code is fourteen (14) years imprisonment. Four years imprisonment was therefore lawful and reasonable.

The appeal lacks merit and it is hereby dismissed. The conviction and sentence are hereby upheld.

**F. N. MUCHEMI
JUDGE**

Judgment dated and delivered on the 25th day of July, 2011 in the presence of the Appellant and the state counsel Mr. Ogoti.

F. N. MUCHEMI
JUDGE