



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CRIMINAL APPEAL NO. 365 OF 2007**

**JOSEPH MWANGI MIANO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(Judgment arising from the Senior Principal Magistrate's Court in Criminal Case No. 1021 of 2006 at Nanyuki)*

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

The appellant John Mwangi Miano was charged with the offence of Robbery with Violence contrary to section 296(2) of the Penal Code the particulars of which were that on the night of 21<sup>st</sup> and 22<sup>nd</sup> May 2006 at Nanyuki town within Laikipia District within the Rift Valley Province jointly with others robbed Joseph Kingori Mathenge of Ksh1200/= and one mobile phone make Siemen C35 all valued at Ksh.8700/= and at or immediately before or immediately after the time of such robbery used actual violence for the said Joseph Kingori Mathenge.

The Appellant pleaded not guilty to the charge and the prosecution case against him was that on 22/5/2006 between 11.00 p.m. and 12.00 while the complainant was on his way home from a bar called Grand Regency, He was attacked by two men one of them being the appellant who held him on the neck and the other held his legs causing him to fall down. He screamed while holding one of the attackers who turned to be the appellant that the robbers started to beat the complainant and the appellant bit his fingers.

It was further the prosecution's case that PW2 came to the rescue of the complainant and they managed to arrest the appellant whom they handed over to the police who were on patrol. The complainant's evidence was that in the process he was robbed of his mobile phone make Siemens C35 and Ksh.1200/= in cash which items were taken by the appellant accomplish.

While put on his defence the appellant opted to remain silent. Upon the evidence presented before the trial court the appellant was convicted and sentenced and being aggrieved has now appealed before this court and has through his petition of appeal raised three grounds namely:-

- 1. That the trial magistrate erred in law and in fact in rejecting the appellant's application for the matter to start De novo contrary to section 77(1) of the former constitution.**
- 2. That the learned trial magistrate erred in law and in fact in refusing to conform with the appellant's application seeking the resummoning of PW1 for more cross examination as envisaged under section 150 of the CPC.**

**3. That the learned trial magistrate erred in law and in facts in declining to pester the prosecution adequately to furnish the appellant with copies of the witness statements to police irrespective of his numerous applications.**

The Appellant has also filed written submissions which he would like us to rely upon.

The state through the learned state counsel appeared to have conceded the appellants grounds three in his grounds of appeal wherein the appellant states that he was never supplied with witness statements.

We have looked at the evidence presented before the trial court and have notice that through the trial the appellant kept on asking for witness statement and the court kept on ordering that the same be supplied but there is no record that he was ever supplied with the same as at the close of the prosecution case. The Appellant has further submitted that he needed those witness statements to enable him cross-examine the complainant and that the said witness was stood down but was never recalled for purpose of cross-examination.

We are therefore of the considered opinion that the appellant constitutional rights to fair trial were violated and on that grounds allow the appeal herein and set the appellant free forthwith unless lawfully held.

**Dated and delivered on ...2nd..... day of .....december..... 2011**

**J. K. SERGON  
JUDGE**

**J. WAKIAGA  
JUDGE**