



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Criminal Appeal 153 of 2008**

**JAMLICK WANJOHI BAKARI.....APPELLANT**

**Versus**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant herein, Jamlick Wanjohi Bakari, was tried and convicted for the offence of stealing from a person, contrary to section 279(a) of the Penal code. He was sentenced to 7 years imprisonment. Being dissatisfied he preferred this appeal. He put forward a total of eight grounds in his petition of appeal. However when the appeal came up for hearing the appellant abandoned the appeal as against conviction. This judgment therefore relates to the appeal as against sentence.

The particulars of the offence are on the 5<sup>th</sup> day of July 2007, at Kagio Market in Kirinyaga District within Central province, the appellant stole Kshs. 1,500/- and a mobile phone make Samsung all valued at Kshs. 8000/- the property of Nahashon Mwangi Muruga from the person of the said Nahashon Mwangi Muruga. Three witnesses testified in support of the charge. Nahashon Mwangi Muruga (P.W.1.) said in that the night of 5<sup>th</sup> July 2007 he was taking some alcoholic drinks in a bar at Kagio Market. He sat on the same table with the appellant and other people. P.W.1 said the appellant left him but later returned with other people whereupon they robbed him of Kshs. 1,500/= and a Samsung phone while he was waiting for a taxi at the watchman's cubicle. P.W.1 said his assailants fled when they heard the sound of an opening door. The appellant was spotted by the watchmen making a return to his room. He was then arrested. Felix Mwaniki Kabiru (P.W.2) a watchman with the bar confirmed having seen the appellant taking drinks with the complainant (P.W.1). P.W.2 said he went to the rear of the bar's premises when he heard a commotion. P.W.2 said he saw three men standing over another. Two jumped over the fence and fled when they saw P.W.2 leaving behind one man. P.W.2 found P.W.1 lying while facing down. The watchman (P.W.2) took P.W.1 and the appellant to the police at Kagio Police post. P.c. Ezekiel Syengo (P.W.3) re-arrested the appellant at Baricho police station.

When placed on his defence the appellant denied ever committing the offence. He claimed he was asleep when he was awoken up by P.W.2 who claimed P.W.1 had lost cash and a mobile phone. The trial court found that there was no dispute that the appellant was placed at the scene of crime. The trial magistrate further found the appellant as having colluded with his accomplices to steal from P.W.1. After my re-assessment of the evidence on record, I am convinced the appellant was correctly convicted.

On appeal, the appellant is of the view that the sentence was harsh and excessive. Mr. Orinda, learned Principal State Counsel is of the contrary view. The appellant was sentenced to 7 years imprisonment. The law provides for a maximum sentence of 14 years. The appellant did not give the trial court any mitigating factors when called upon to do so upon his conviction. This court can only interfere with the trial court's discretion on sentence if that court did not take into account relevant factors or took into account some irrelevant matter or the sentence is manifestly excessive. The record shows that the

appellant was a first offender. It would appear the trial court did not consider this fact. For the above reason I am obliged to interfere with the order on sentence. Had the learned Resident Magistrate taken into account that fact he would have meted out a lesser sentence. The appeal as against sentence is allowed. The sentence of 7 years is set aside and substituted with a sentence of 5 years. The sentence shall run from the date of sentence.

Dated and delivered this 13<sup>th</sup> day of January 2010.

**J.K. SERGON**  
**JUDGE**

In open court in the presence of the appellant and Mr. Makura learned State Counsel.

**J.K. SERGON**  
**JUDGE**