



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**Criminal Appeal 99 of 2007**

SAMUEL NJUE JASHON.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

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

On 8/3/2005, Peter Gitau Wanyoike (PW1) and his wife Monica Wanjiku (PW2) were asleep inside their house at Majimbo Estate within Embu Municipality. Their car Registration No. KAK 254 A was parked outside near the bedroom window. There was a security light outside where the car was parked. PW2 heard movement outside the window and immediately alerted her husband. He opened the curtain and saw 3 people standing next to his car. One of them was trying to open the door and was also armed with a metal bar. PW1 banged the window hard and started to shout thief! thief!. The thieves started running away. PW3 P.C Chepkwony and his colleague PW4 who were on patrol duties within that area at the material time heard the banging and the shouts of thief! thief! They ran towards the direction the shouts were coming from. They saw the 3 suspects running away from the complainant's plot. They ordered them to stop. PW4 shot in the air and the appellant stopped. The 2 others ran away. PW3 and 4 caught the appellant and returned him to the scene. They called PW1 who identified the appellant as the one he had seen trying to open his car. A quick search was conducted on him and he was found with a master key. He was still having the metal bar in question.

PW1 identified him positively and so he was escorted to the police station where he was charged with the offence of attempted Robbery contrary to section 297(2) of the Penal Code. When placed onto his defence, the appellant made an unsworn statement and called no-witnesses. He said that he met the police officers somewhere near Gerish Bar about 10.30 p.m. on the date in question. They ordered him to sit down, searched him and took his Kshs.3,000/- They then injured his hand and took him to the complainant's house. He denied having been found with the master Key and iron bar. He therefore denied having committed the offence he is charged with.

The learned trial magistrate considered all this evidence and in his well reasoned judgment found that there was sufficient light outside the complainant's house and that the prevailing conditions were suitable for a positive identification of the appellant. He was therefore satisfied that the appellant had been properly identified at the scene by PW1 as he tried to break into his motor vehicle. The learned trial magistrate nonetheless found and rightly so that the charge of attempted robbery had not been proved beyond any reasonable doubt.

He invoked section 179 of the Criminal Procedure Code and found the appellant guilty of attempted stealing of a motor vehicle contrary to section 278 A of the Penal Code and convicted him on that charge. He sentenced him to 5 years imprisonment.

Being aggrieved by the said conviction and sentence, the appellant filed this appeal. He filed 6 grounds of appeal but purported to file amended grounds without the leave of the court. I will ignore the amended grounds but in any case they are almost similar to the original grounds. He tendered a written submission in support of the grounds of appeal.

Learned counsel for the state supports both the conviction and the sentence. He submitted that the appellant was properly identified and further that the recovery of the master key and the metal bar corroborated the evidence of PW1 and also that of the police officers.

I have considered the evidence adduced before the trial court along with these submissions. After re-evaluating the evidence tendered before the trial court, I too am satisfied that the appellant was properly identified by PW1. He peeped through the window. The area was well lit by electric light. He saw the persons before he banged the window and screamed for help. PW3 & 4 heard the screams and rushed towards the said direction. They saw the appellant and the others running from the scene. They managed to arrest the appellant and when they took him back to the complainant's house, he confirmed that the appellant was the one he had seen a few minutes earlier trying to break into his motor vehicle.

There was no possibility of mistaken identity here. That evidence was corroborated by the recovery of the master Key and the metal bar. Indeed how else would the police officers know where the incident had taken place if they had not seen the appellant and the others running away from there? PW3 and PW4 had no reason whatsoever to fabricate the case against the appellant. Nor had the appellant.

I am satisfied that the appellant was properly convicted. The evidence against him was overwhelming. The learned trial magistrate did consider his defence but found it unbelievable. I am satisfied that the appellant was one of the persons who attempted to steal the complainant's motor vehicle on the night in question.

I have no reason to deviate from the Judgment of the learned trial magistrate. I find this appeal devoid of merit and I dismiss the same accordingly, and confirm the conviction and sentence of 5 years imprisonment.

**W. KARANJA**  
**JUDGE**

Delivered, signed and dated at Embu this 25<sup>th</sup> day of Feb 2010

**In presence of:- Appellant and Ms Matiri for state.**