



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Criminal Appeal 81 of 2008

WICKLIFF ALIWA YAWALA.....APPELLANT

-AND-

REPUBLICRESPONDENT

(An appeal from sentence delivered by Senior Principal Magistrate Mrs. M.W. Murage on 20th December, 2007)

JUDGMENT

The appellant was charged with stealing from the person contrary to s. 279(a) of the Penal Code (Cap. 63, Laws of Kenya). The particulars were that the appellant, on 17th November, 2007 at Court Yard Ground, Kenyatta International Conference Centre in Nairobi, stole a purse which contained Kshs. 1,200/= being the property of *Evaline Vurimu Mnene*, from the person of the said *Evaline Vurimu Mnene*.

On 17th November, 2007 the substance of the charge, and every element thereof was stated to the accused by the Court, in a language that he understands, and he admitted the charge as true. The facts were then read out to the appellant herein, and he admitted the same to be true, whereupon he was found guilty and duly convicted.

The facts were that on the material date, a ceremony was taking place at KICC which was attended by the complainant. The complainant's pouch was stolen, and a purse inside it, containing Kshs. 1,000/=, was taken. As the suspected thief, being the appellant herein, walked away from the scene, members of the public informed the complainant; and the appellant was then arrested and taken to KICC where he was charged with the commission of the offence.

The learned Magistrate after taking into account the Probation Officer's report; after treating the appellant herein as a first offender; and after taking into account the appellant's mitigation statement, committed him to jail for a term of four years.

In his grounds of appeal the appellant stated as follows: he had pleaded guilty in the hope that he would be subjected to a short imprisonment term; he was remorseful, and deeply regretted the loss suffered by the complainant; he had no previous convictions; the sentence imposed was "inordinately harsh and severe"; he be considered for a non-custodial sentence.

In presenting his appeal, the appellant stated that he had considerable family responsibilities, and was alone responsible for care for his mother. He asked for a pardon.

Learned counsel *Mr. Murithi* contested the appeal, and submitted that the appellant had been subjected to

a four-year term of imprisonment when a maximum prison term of 14 years was provided for; such, counsel urged, was a lenient sentence which should be sustained.

I have considered the merits of the appeal, but come to the conclusion that it has none. Consequently, I hereby dismiss the appeal, and sustain the sentence imposed by the trial Court.

Orders accordingly.

DATED and DELIVERED at Nairobi this 20th day of January, 2009.

J.B. OJWANG

JUDGE

Coram: Ojwang, J

Court Clerk: Huka

For the Respondent: Mr. Muriithi

Appellant in person