



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO. 206 OF 2005

PETER MWANGI NJOROGE..... ACCUSED

VERSUS

REPUBLIC..... RESPONDENT

*(Being an appeal from the judgment of E.G. Mbaya,
Ag. Senior Resident Magistrate in Senior Resident Magistrate's
Criminal Case No. 87 of 2005 at Nanyuki)*

JUDGMENT

The appellant was charged with robbery with violence contrary to section 296(2) of the Penal Code. The appellant was found guilty as charged at the Lower Court and he was sentenced to death as provided by the law. He was aggrieved by the conviction and sentence and has therefore preferred this appeal before court. This is the first appeal. In deciding this appeal we are guided by the principles enunciated by the Court of Appeal Case of *Gabriel Njoroge vs Republic (1982 – 88) 1 KAR 1134 at page 1136* where it was stated:

*“As this court has constantly explained, it is the duty of the first appellate court to remember that the parties to the court are entitled, as well on the question of fact as on the question of law, to demand a decision of the court of the first appeal and as the court cannot excuse itself from the task of weighing conflicting evidence and drawing its own inferences and conclusions though it should always bear in mind that it has neither seen nor heard from the witnesses and make due allowance in this respect (see *Pandya v R (1957) EA 336, Ruwala vs R (1957) EA 570*).”*

PW 1 Carol Kendi Riungu was a resident at Nanyuki township. She was employed as a clerk at Homegrown Limited. On 11th January 2005 at 7.45p.m., she was in the company of her friend Milka Wangui and they were walking near Nyakio Building in Nanyuki town. Someone at that point held her handbag. They both struggled for ten minutes until when the other person drew a knife which caused her

to release the handbag. Both her and her friend began to scream and members of the public gave chase. As they ran policemen assisted them to arrest the person. Her handbag was recovered containing Kshs.206/-, mobile phone, her national ID and her work ID. On being cross examined by the appellant the complainant said that she did not see him having a rungu. She responded to his question by saying that he was arrested about 200 metres away from where he had robbed her. The complainant said that at the time there was sufficient light.

PW 2 Milka Wangui Munene also said that she works at Homegrown Limited. On 11th January 2005 the complainant had visited her. As they were going towards her house along hospital road near Nyakio restaurant, they passed through a corridor. A man emerged and held on to the complainant's handbag. They struggled then the man drew a knife. When the complainant saw the knife she released the handbag. At this time the man began to run away. They both screamed. Members of the public ran after the man. She identified that man as the appellant who was in the dock. She said that there was sufficient electric light at Nyakio. The accused was arrested by members of the public with the assistance of police officers. He was arrested whilst still in possession of the complainant's handbag.

PW 3 was a Police Officer. He said that on 11th January 2005 at about 7.30p.m. he was in the 999 patrol car. He was patrolling in the town. At about 8p.m. he heard noises from town. People were screaming and calling out, "thief! thief!" A crowd of people were chasing that man. He noted that the man had a rungu. His colleague PC Gikundi advanced towards the appellant. He ordered the appellant to stop when the appellant threatened him with the rungu. It was at this time that PW 3 tripped the appellant causing him to fall down. He arrested him and took from him the rungu and the handbag. After a short while the complainant came and said that she had Kshs.206/- and a mobile phone in the handbag. PW 3 opened the handbag and confirmed that the handbag had the money and the mobile phone and other items. On being cross examined by the appellant he responded by saying that he saw the appellant running holding on to the handbag.

The appellant was found to have a case to answer. In his defence he said that on 11th January 2005 he was coming from his place of work in the company of Hussein Njaramba. At 7.30p.m. they went to Likii estate. There they met many people and they stopped. One girl said that the person had such a jacket as he was wearing. As she said so she pointed towards the appellant. The appellant was arrested and beaten. His companion tried to tell the people that he was with the appellant but no one listened. On being arrested he said that nothing was recovered from him. He called Hussein Njaramba as his witness. He described himself as a painter and that the appellant was known to him. On 11th January 2005 at about 7.30p.m. they met people coming towards them. They stopped. One lady in that crowd said that the person who snatched her handbag had a red jacket. At that point the appellant was told to sit down. People began to beat him. When the police came he tried to tell them that he was in the company of the appellant. They failed to listen to him. On being cross examined by the prosecution this witness confirmed that he was a friend of the appellant. He confirmed that he was in remand for an offence of stealing. He denied that the appellant committed the offence he was facing.

The appellant in his written submission faulted the charge for mentioning a rungu and yet the complainant had said that her assailant had a knife. In our view that failure to indicate that the appellant had a knife is not prejudicial to the appellant. We are satisfied with the prosecution's evidence of the identification of the appellant. The appellant had a knife, a dangerous and or offensive weapon or instrument in the circumstance. This was the case of continuous chase which was not broken. The complainant and her companion from the moment they screamed members of the public responded by chasing the appellant. He was chased until he was arrested by police officers in vicinity. We are satisfied also that the ingredients of robbery with violence were satisfied in this case. In the case of *Johana Ndungu v Republic Criminal Appeal No. 116 of 1995* the Court of Appeal had occasion to succinctly set out the ingredients of robbery with violence. They had the following to say:-

"In order to appreciate properly as to what acts constitute an offence under section 296(2) one must consider the sub-section in conjunction with s. 295 of the Penal Code. The essential ingredient of robbery under section 295 is use of or threat to use actual violence against any person or property at or immediately after to further in any manner the act of stealing. Therefore, the existence of the afore-

described ingredients constituting robbery are pre-supposed in the three sets of circumstances prescribed in s.29692) which we give below and any one of which if proved will constitute the offence under the sub-section:

- 1. if the offender is armed with any dangerous or offensive weapon or instrument, or***
- 2. if he is in company with one or more other person or persons, or***
- 3. if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other violence to any person.”***

The court continued after explaining the essential ingredients under the first two sets of circumstances:-

“With regard to the third set of circumstances there is no mention of the offender being armed or being in company with others. The court is not required to look for the presence of either of these two ingredients. If the court finds that at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other violence to any person (may be a watchman and not necessarily the complainant or victim of theft) then it must find the offence under sub-section (2) proved and convict accordingly.”

We have considered the defence raised by the appellant and we find that the same is not believable. He claimed to have been an innocent bystander. In this regard he called a witness who supported him in his defence that he was innocent of the charge. That defence is faced by overwhelming evidence of the prosecution witnesses who clearly stated that it was the appellant who snatched the complainant's handbag and on their screaming was chased continuously by members of the public and was eventually arrested by police officers. We find that the prosecution adequately met the criminal standard of proof. The case was proved beyond a reasonable doubt. We therefore do hereby dismiss this appeal.

Dated and delivered at Nyeri this 29th day of May 2008.

MARY KASANGO

JUDGE

M.S.A. MAKHANDIA

JUDGE