REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Case 13 of 2006

JULIUS NDIRI MAJI…….APPELLANT

VERSUS

REPUBLIC……RESPONDENT

JUDGMENT

The appellant was charged tried and convicted on a charge of stealing from a person contrary to Section 279 (a) of Penal Code and was sentence to imprisonment for a period of 5 years.

He has filed 5 grounds of appeal namely:-

1. that the Trial Magistrate failed to consider the probability of PW1 & PW8 framing the charge against him.

2. and he was not given a chance to prepare the case.

3. that the conviction was based on evidence that could not meet the standard.

4. Also that the prosecution did not proof its case beyond reasonable doubt.

5. And that the evidence of Pw1 was not reliable and was not water tight.

The prosecution evidence was led by PW1 Susan Gichugu the complainant. She had a cell phone in her handbag. It was about to rain and people crowded the corridor at D.O's office. The appellant was standing next to the complainant. She wanted to make a call but when she opened her handbag she found phone was missing. As she was inquiring from Appellant of her phone, the phone rung from his coat pocket. Then a former Assistant chief was nearby. He grabbed the appellant to the police office. There the appellant was searched and the complainant mobile phone was recovered. The complainant's evidence was supported by that of PW2 former Assistant Chief Nephat Muchiri Njiru and P3 police officer James Gikonyo Chege.

On the part of the Appellant he made unsworn statement and put himself in the scene at D.O's office and having met the complainant and the former Assistant Chief. He denied the offence.

Upon considering the evidence of prosecution and the statement of appellant I find that the appellant was arrested red-handed as it were and his defence is a charm and unbelievable.

It is my finding that the prosecution has proved its case beyond any reasonable doubt and I do not interfered with conviction. On the issue of sentence he was sentenced to five years imprisonment. The maximum sentence is fourteen years. I do not find 5 years excessive or harsh. The appeal is dismissed.

Dated this 14th May, 2008.

J. N. KHAMINWA

JUDGE