REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 279 of 2005

WILLIAM MURIITHI WANJIKU ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

(Appeal from original Judgment in the Senior Principal Magistrate's Court at Nanyuki in

Criminal Case No. 1901 of 2003 dated 4th day of March 2005 by P. C. Tororey – SRM)

J U D G M E N T

The appellant was convicted after trial for the offence of robbery contrary to section 296 (1) of the Penal Code. The charge having been reduced from the initial one of robbery with violence contrary to section 296 (2) of the Penal Code. He was thereafter sentenced to 5 years imprisonment.

In this appeal before me, limited to sentence only the appellant petitions me to reduce the sentence on the ground that the sentence imposed was harsh and excessive; that he had reformed, become saved Christian and a preacher to the condemned in prison. Finally he submitted that he was remorseful.

The appellant, was among a group of 5 people who attacked the complainant as she walked home with her children. The attack was at Likii River in Nanyuki. In the process the complainant lost her lesso, a wrist watch and cash Kshs.1,400/=. During the attack, the complainant grabbed the appellant's trousers and never let it go until she was assisted by her daughter to subdue the appellant as they screamed. Members of the public joined the fray, arrested the appellant, as his other colleagues escaped and took him to the police station. He was thereafter charged.

Although the appellant was initially charged with offence of robbery with violence, the learned magistrate for reasons which are not clear from the record however opted to reduce the charge to one of simple robbery. Perhaps the decision was informed by the fact that nothing was stolen from the complainant. It would appear from the evidence of the complainant that the items she lost during the attack were not taken by the appellant and or his accomplices. The appellant who was arrested at the scene of crime was not at all found in possession of the said items. It is possible that those items may have been taken by members of the public who joined in the fray to assist the complainant. It was therefore collateral lose which could be blamed on the appellant.

Be that as it may, the offence for which the appellant was eventually convicted of, carries a maximum sentence of 14 years. However the appellant was only sentenced to 5 years. It cannot be said therefore that the sentence was harsh nor manifestly excessive. It was legal. The sentencing notes of the learned magistrate clearly demonstrates why the learned magistrate felt that the sentence imposed was appropriate. The learned magistrate was alive to sound sentencing principles. She exercised her discretion in sentencing judicially as opposed to capriciously. She took into account relevant considerations and eschewed irrelevant considerations.

I think that the sentence imposed by the trial court was not manifestly excessive and or harsh as to call for my intervention. Accordingly I decline to review the sentence imposed downwards with the

consequence that the appeal is dismissed.

Dated and delivered at Nyeri this 10th day of June 2008

M. S. A. MAKHANDIA

JUDGE