



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT KISII**

**Criminal Appeal 193 of 2006**

**SHEM OGUNCHA SEME ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(From original conviction and sentence in Senior Resident Magistrate's**

**Court Ogembo Criminal Case No.414 of 2006 by J. D. KWENA – S.R.M)**

**JUDGMENT**

The appellant faced two counts of robbery with violence. The particulars of the offence in the first count were that on 8<sup>th</sup> December, 2005 at Kilgoris town in Transmara District, jointly with others not before court, while armed with a dangerous or offensive weapon namely a knife, the appellant robbed **Salome Leina** of her mobile phone make Nokia 1100 valued at Kshs.5000/= and cash Kshs.120/=. In the second account, the appellant was accused of having robbed **Agnes Wanjiru Ndura** of her mobile phone make Nokia 2100 valued at Kshs.7500/= and at the time of such robbery or immediately before or immediately after such robbery threatened to use actual violence on the said **Salome Leina and Agnes Wanjiru**.

After a full trial, the appellant was convicted of simple robbery contrary to **Section 296(1)** of the **Penal Code** and sentenced to 6 years' imprisonment.

The appellant was aggrieved by the said conviction and sentence and preferred an appeal against the same. He faulted the learned trial magistrate for convicting him on insufficient identification evidence.

The prosecution evidence can be summarised as hereunder:

On 8<sup>th</sup> December, 2005 at about 9.00 p.m, **Salome Leina, PW1**, and **Agnes Wanjiru Ndura, PW2**, were going home. As they were about to get to their residence, they met two people.

One of them greeted the two ladies. PW1 recognised the voice as that of the appellant whom she knew well as she had earlier engaged him to dig a latrine pit at her home. PW1 added that there was bright moonlight and was therefore able to see the appellant's face. PW1 had also seen the appellant during the day hours. The appellant grabbed a mobile phone from PW1 and his accomplice stole Kshs.120/- from her.

PW2 was also robbed of her mobile phone. PW2 was an employee of PW1 and also recognised the appellant as a person who had been employed by the husband of PW1 sometime ago.

PW1 and PW2 reported the incident to the police. They told the police that they were able to recognise one of the robbers although they did not know his name. On 1<sup>st</sup> February, 2006 PW1 spotted the appellant at a filling station and she told her husband, **Joseph O. Sipero, PW4**, who went to Kilgoris Police Station and notified **P. C. Julius Mukora, PW3**, who effected arrest of the appellant.

In his unsworn defence, the appellant denied having committed the offence. He however confirmed that PW4 had contracted him to dig a pit for a latrine at his home. He alleged that PW4 was to pay him Kshs.10,000/= but he paid him only Kshs.5,000/=. The appellant said that he kept on going to the home of PW4 to demand the balance and that PW4 promised to pay him at a future date.

From the evidence on record, it is not in dispute that PW1 and PW2 were robbed of their mobile phones and cash on the material night. The complainants knew the appellant as he had worked for PW4 at his home, where PW1 and PW2 were staying. The complainants were able to recognise the appellant by his voice and his face on the material night. There was bright moonlight by which PW1 & PW2 were able to see the appellant. When they went to report the robberies to the police that night, they said they recognised the appellant as a person who had been employed by PW4 to dig a latrine pit at their home.

The appellant indeed confirmed that he had been given such a job by PW4. The complainants' evidence was unshaken and remained consistent all through. It was well corroborated by that of PW3 and PW4.

I am satisfied that the appellant's conviction was safe. The sentence that was meted out by the trial court was neither harsh nor excessive. I find no merit in this appeal and dismiss it in its entirety.

**DATED, SIGNED and DELIVERED at KISII this 21<sup>st</sup> day of July, 2008.**

**D. MUSINGA**

**JUDGE.**

Delivered in open court in the presence of:

Mr. Kemo Senior Principal State Counsel for the Republic

Appellant.

**D. MUSINGA**

**JUDGE**