

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 53 of 2004

SOSPETER MUGO KABIRU.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(Being appeal against conviction and sentence by J. M. Githaiga, Resident Magistrate, in the Resident Magistrate's Criminal Case No. 68 of 2004 at Baricho)

JUDGMENT

The Appellant was charged with stealing from the person contrary to *Section 279 (a)* of the Penal Code. The Appellant pleaded not guilty and at the trial the following evidence was given by the prosecution.

P.W.1 stated that on the 7th Aug 2004 at around 1 a.m. while he was sleeping in the police cell at Baricho Police Station he heard someone tell him to remove the money he had. That demand was made both by the accused together with another person. The accused took from him Ksh.700/-. He confirmed that other people in the cell had also their money stolen by the accused. On being cross examined he said that he did not know that he was supposed to leave his money with the report officer at the report office. He said that he had intended to use the money to buy food. P.W.2 stated that on the material day the accused said he would organize for searches to be carried out so that he could take the money, which was in the persons of those who were in the cell with him. P.W. 2 confirmed that he saw the accused person taking Ksh.700/- from P.W.1. He also confirmed that the accused took Ksh.40/- from Michael Maina. The accused took from P.W.2 Ksh.70/-. He said that the police officer on duty was informed but that the accused passed the money to the next cell through an opening between the two cells. P.W. 2 confirmed that the accused person before court was the person who stole the money. On being cross-examined P.W.2 stated that he did not know he had to leave his money at the report office. He confirmed on re-examination that the accused stole the money with the assistance of a young man. P.W.3 Michael Maina confirmed that on the material date he was in a cell in Baricho Police Station. As he slept he saw the accused demanding money from P.W. 1 and he also stole from Michael Maina Ksh.40/-. He also confirmed that the accused stole Ksh.70/- from P.W.2. He said that the accused threatened him with death if he reported the matter. P.W. 4 was a police officer attached to Baricho Police Station and on the material date he went to check on the condition of the people in the cell. That before he went to the cells he had heard someone ordering others to allow him to carry out searches of them. He said that he identified that voice as the voice of the accused. He stated that he found the accused person holding another prisoner and on being asked what he was doing he said that he was disciplining him. The police officer confirmed that a report was made by P.W.1, 2 and 3 of the theft carried out by the accused. He confirmed that no money was found on the accused person. On being found with a case to answer the accused denied that he had stolen money from other prisoners while in the cells. In the trial court's judgment, the court found that a case had been made out beyond reasonable doubt against the accused. On conviction the accused was sentenced to 18 months imprisonment on each count of theft. He was aggrieved by that judgment and has appealed against conviction and sentence. His grounds of appeal are as follows:

1. *Your Lordship, I pleaded not guilty to the charge of stealing from a person where I was sentenced to serve 4 ½ years imprisonment.*

2. *Your lordship the learned magistrate did not consider the statement of P.W.1 that was stolen in the police in the police cell but he did not appoint (sic) me before the court.*
3. *Your lordship PW2 states that his money was stolen but he did also appoint on my side PW (sic) 3 states about threatenings and I don't know him he also didn't identify.*
4. *Your lordship, the police officer who was on duty states that he searched us in the morning at the police cells which we were at, but he come across to see only 80/= but did caught (sic) it with me even he did not show the money before court.*
5. *Your lordship, there was no any exhibit identified before the court that was searched (sic) from me. Even also nobody enters at police cells with either belt or money.*
6. *Your lordship there was an insists (sic) from police officer incharge of baricho to torture me in order to accept the issued case, so your lordship there is a grudge between me and the O.C.S. who is also the prosecutor of Baricho Law Court No. 3.*
7. *Your lordship I do kindly beg the court to follow the grounds indicated and it will find that I was sentenced due to the pressure of the OCS.*
8. *The sentence metted against me was manifestry harsh and excessive considering the mitigation factors and all other circumstances of the case and ought to be quashed and set aside.*

The appeal was opposed by the state on the basis that the prosecution had proved the case. The state counsel submitted that the evidence of P.W.1 was corroborated by P.W.2 and P.W.3. He further stated that defence of the Appellant was mere denial.

I have considered the evidence of the trial court and I do agree with the submissions of the state counsel. The evidence of P.W.1, 2 and 3 was clear cogent and uncontradicted by defence. The three complainants clearly identified the accused person at the trial. There is no basis that I can find for interfering with the conviction of the trial court. Having so found, I also find no basis for interfering with the sentence meted out by the trial court. Accordingly the Appellant's appeal is hereby dismissed.

Dated this 23rd March 23rd March 2007.

MARY KASANGO

JUDGE