



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Criminal Appeal 92 of 2005

PETER MURIUKI KITHINJI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with the offence of Robbery contrary to Section 296 (1) of the Penal Code. He was tried and convicted and sentenced to 5 years imprisonment. The appellant complained that the evidence of suspicion cannot sustain a conviction that the appellant was arrested from a large crowd of people and how did they know which one to arrest, did the complainant know who the person he grabbed were in the dark, that the appellant was arrested at the scene but no evidence of resistance of torn clothes, fresh bruises scratches cash robbed there was no evidence of light, how long did the incident took, there was no description of clothes worn. The record shows that PW1, Timothy Muchiri Nthiga on 20/2/2004, left Mumunya Bar at Kiritiri market and started walking home. At the gate of the bar he met people who held him and robbed him. He was able to hold onto one of the robbers. He screamed and people who were in the bar came to his rescue. The accused had dipped his hand into the pocket of his shirt. The complainant recognized the robber as his neighbour at home and a cousin. He was robbed Shs.1,200/-. There was torch light. PW2 officer then attached to Kiritiri Police Post while on patrol heard the noise and went to see what was happening he found complainant and appellant who was complaining that he had been robbed who was arrested by members of public He re -arrested the appellant and he took him to Kiritiri police post and later the appellant was charged with this offence.

On his part the appellant made unsworn statement. He said he was in a hotel and was going home after 9.00 p.m. He was arrested and led to police post. He denied having committed the offence. Now considering his grounds of appeal there was torch light. He was arrested and taken to police post immediately for scene. There is no possibility of error since he was arrested in the act and taken to police post immediately. This evidence is supported by his own statement. The appellant was not arrested on suspicion. He was among the persons who attacked the complainant. The crowd came after he was held by the complainant and the complainant screamed. The grounds of appeal do not correspond with the evidence on record.

I find the same to be with no merit. I find the prosecution evidence was sufficient to prove the prosecution case beyond reasonable doubt and I see no reason to interfere. The appeal is dismissed.

Dated this 31st July, 2007.

J. N. KHAMINWA

JUDGE

31/7/2007

Before court

Appellant present

Mr. Kimathi for State present

Judgment read in open court.

J. N. KHAMINWA

JUDGE