



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

**Criminal Appeal 131 of 2005**

**MARY WANJIKU KARIRIMBI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

Mary Wanjiku Karimbiri alias Mary Nyambura Rakimeme was charged with others with main charge of Robbery with violence contrary to Section 296 (2) of the Penal Code. There were other counts II, III and IV and an alternative charge of handling stolen goods contrary to section 322 (2) of Penal Code. The appellant was convicted only on the alternative charge of Handling Stolen property and sentenced to 3 years imprisonment. She has filed six grounds of appeal. She was represented by Counsel Mr. Gacheru. The appellant argued that there was contradictory evidence given by PW1, the trial Magistrate failed to hold submission made in respect of items in police custody on 5/4/2003 and that the complainant did not give descriptions of items in his statement recorded on 24/3/2003 but only appeared on 5/6/2003 after he saw items at police station and the statement was produced as exhibit 1. The items listed on the charge sheet are:-

- cash Shs.20,000/=
- mobile phone Erickson T 28
- one handbag, one radio, CD player, CD Discs.
- 5 packets of Omega medicines
- One camera make Olympus
- 2 mobile chargers
- One Jacket
- One Kitenge dress all valued at Shs782,000/= including vehicle KAC 806 A.

In the alternative charge the items listed are one Olympus camera, one Kitenge Dress 2x10 (19 packets Omega medicine) all valued at shs.25,500/=. The evidence of PW1 was that on 24/3/2004 they were robbed of their vehicle, money, and wife's phone. When the vehicle was recovered some items were not in the car 500 capsules, wife's Kitenge dress was missing, a camera was also missing. 5 packets Omega medicine were missing. Later after expiry of about 3 to 4 months the complainant was called to police

station and shown some items from which he picked “our camera” and wife’s dress plus the drugs.

On cross-examination he admitted that he had not written about his wife giving handbag. He also stated that his wife’s clothes were stolen but did not say “wife’s Kitenge dress”. He also failed to give the make of his camera “Olympus”. He recorded a second statement on 5/6/2003 when he gave description of the camera and talked of his wife’s Kitenge dress. He also noticed that not 500 capsules were found but 380 medicine. As for the radio which had been removed from the stolen vehicle no evidence was available as to when it was removed from the vehicle. The appellant was charged with other persons. The evidence is that she was the owner of the premises where their stolen items were found. There is no dispute on this evidence. Some of the things recovered and identified as being of the complainants. The PW2 wife of PW1 in her testimony said “my clothes were also missing and one of them was a Kitenge dress”. PW1 did identify a Kitenge female dress among the recovered items. It was submitted that PW1 gave contradictory evidence regarding this Kitenge dress.

Firstly it is to be noted that the complainant and his wife were able to see the missing items only when the car was recovered. PW1 may not have known that the Kitenge of his wife was missing until the wife said so as there were other clothes stolen. The test of this evidence is that some of the stolen goods recovered in the house of the appellant were of the complainants and there was no dispute. I find that the evidence of PW1 in this respect was not vitiated by any contradictions there may be found in respect of “Kitenge Dress” The trial Magistrate was correct in making this finding.

On ground 4 of petition I find the trial Magistrate made a correct finding discrepancies complained of are minor nature and do not weaken the prosecution case.

On ground 5 of appeal it is to be noted that Magistrate was dealing with several counts and several accused persons and he had to write only one Judgment. After perusing and taking into consideration of the authorities relied upon by counsel for appellant, I find Section 169 CPC was complied with the Judgment stated the charges involved. The Trial Magistrate only had the evidence before him and acquitted the appellant on all other charges except alternative which is subject of this appeal. The trial magistrate did give reason for his judgment. There was denial that the stolen items were found in the premises of the Appellant some of the items did belong to the complainants. In her defence the appellant gave an unsworn statement. She admitted that all the accused including herself were arrested from her premises. She did not say anything about the recovered items. This record as far as it relates to the alternative charge shows that the prosecution did prove its case beyond reasonable doubt.

I find the grounds of appeal without merit. The Appeal is therefore dismissed.

Dated this 9<sup>th</sup> October, 2007.

**J. N. KHAMINWA**

**JUDGE**

**9/10/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Omwega for State**

**Mr. Gachefu for Appellant**

**Appellant not present.**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**