REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 23 of 2004

JACKSON MWANGI GITHAE……..……..APPELLANT

Versus

REPUBLIC……..……RESPONDENT

(Being appeal against conviction and sentence by L. Nyambura, Resident Magistrate, in the Resident Magistrate's Criminal Case No. 1144 of 2002 at Kigumo)

JUDGMENT

The Appellant was charged with stealing from a person contrary to *Section 279 (a)* of the Penal Code. The Appellant pleaded not guilty and at the trial P.W.1 stated that the complainant had reported at the Mugetho Chief's Camp that she had met with a certain man who snatched her bag containing various items of property. The complainant informed P.W.1 that she would be able to identify the man. P.W. 1 took the complainant to Kigoro Shopping Centre but they were unable to trace the person. She stated that that person was later arrested on the 8th December 2002 at Kigoro Shopping Centre by members of the public. He was placed in the cells and was later identified by the complainant.

P.W. 2 the complainant stated that on 28th November 2002 at about 1 p.m. she had been employed on temporary basis at Maragua Ridge. On that particular day and time she was proceeding to the said institution when she met with a man who was coming towards her. She said that he was not familiar to her and proceeded to describe his clothing as a purple T-shirt and sandals. She said that he pointed a knife to her and asked the complainant to go into the bush. That she screamed and screamed again then gave him her handbag. She described the contents of the handbag as having a certificate, CV, National ID 4 text books and Ksh.165/-. She stated that the accused on taking the bag ran away. The complainant then went to the school and reported the matter to the headmaster. That the matter was later reported to the assistant chief of Mugetho Chief's Camp. The complainant identified the T-shirt which was in court as the one that the accused was wearing when he committed the offence. She also identified the shoes.

P.W. 3 stated that he is attached to Maragua Police station. On the 6th December 2002 while he was on duty at the police station, the accused person was brought to the police station in the company of the complainant. He said that the complainant narrated how the accused person snatched her bag. He stated further that no recovery of the stolen items was made. P.W. 4 stated that he is a teacher at Maragua Ridge Secondary School. He confirmed that the complainant reported to him of having been robbed. He confirmed that he is the principal of that school.

On the court finding that the accused had a case to answer the accused in his defence stated that he was not the one who committed the offence and that he was not arrested immediately the offence occurred. He said that he denied the charge. That he was arrested at his home and nothing was recovered from him. The trial magistrate found that the prosecution had proved the case against the accused beyond reasonable doubt. He was convicted and was sentenced to three months imprisonment. The Appellant was aggrieved and therefore proceeded to file the present appeal. In his appeal he states that the trial court failed to appreciate the contradictions and the discrepancies of the prosecution witnesses. That the trial court failed to find that the complainant did not know him despite alleging that he had stolen from her. He further found fault in the evidence of P.W. 4 and stated that his evidence was fabricated. He further

argued that the trial court erred in law in not finding that no exhibits were produced by the prosecution. The appeal was opposed by the State on the basis that there was overwhelming evidence against the accused. The State also submitted that the sentence was well merited.

I have considered the evidence submitted at the trial and find that indeed there was overwhelming evidence against the accused person whereby P.W.2 was able to positively identify the Appellant both in person and by the clothing he was wearing. The items of clothing that the Appellant was wearing were exhibited at the trial. Even though identification was by a single witness I am of the view that it is safe to rely on it because it was corroborated by the clothing which the complainant was able to identify, further the attack took place in broad day light 1.00 p.m. when the complainant described being approached by the Appellant before the attack and consequently had a good opportunity to see him. That was not fleeting glance. Further the Appellant did not deny being in the vicinity of attack on the material date. The court finds that the quality of identification remained good up to the close of the defence case. I seek to rely on the case of **MAITANYI-V- REPUBLIC [1986] KLR 198** where it was held:

"***(1) Although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult.***

(2) When testing the evidence of a single witness a careful inquiry ought to be made into the nature of the light available conditions whether the witness was able to make a true impression and description."

Having therefore considered the totality of that evidence, I am of the view that the prosecution met the required criminal standard and that the trial court was right to convict the Appellant. With regard to the sentence, the law provides the sentence of 14 years. In this case the Appellant was sentenced to three years. I can find no basis of interfering with that sentence. The Appellant's appeal therefore is hereby dismissed.

Dated and delivered this 23rd March 2007.

MARY KASANGO

JUDGE