



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

**Criminal Appeal 81 of 2005**

**PETER NDELE OKORO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(From original conviction and sentence of the SRM's court Migori in criminal case No.193 of 2005)**

**JUDGMENT**

The appellant was convicted on two counts of stealing from the person contrary to s.27(a) Penal Code by Migori Principal Magistrate. He was sentenced to 4 years imprisonment on both counts to run concurrently.

Particulars were that on 14<sup>th</sup> February 2005 at Migori Law Courts he stole sh.200/- property of Maynard Okello Ochiege from the person of the said Ondiege. In count 2 it was alleged that on the same day and place he stole shs.72/- from Martine Onyango.

The appellant was in remand for another offence and had been taken to Migori court. He was placed in court cells. The two complainants were also taken to the cells the first for a traffic offence and the second for a changaa offence. The appellant dipped his hands into the pocket of the 1<sup>st</sup> complainant and took shs.200/-. The first appellant was scared and did not react. Appellant went to the second complainant and removed sh.72/-.

2<sup>nd</sup> complainant started to struggle with him. Police officer who noticed the commotion intervened and arrested the appellant. He was charged.

I concur with the State Counsel that the evidence was overwhelming and the conviction was proper. PW1 & 2 told court how the accused stole from them. It seems he had been in remand for a long time and had become hardened.

He stole the money openly and bit PW2 when he dared to struggle with him. He was arrested with some of the stolen money. PW3 and 4 who too were inmates in the same cells corroborated the evidence of PW1 & 2.

I therefore find the conviction was proper and I uphold it.

As for sentence the appellant was jailed for four years in each count. I think the court went abit overboard possibly because the offence was committed within its precincts. Appellant was treated as a first offender. He told court that he had been in remand for 1<sup>1/2</sup> years. The amount of money stolen was not much. The sentence of 4 years imprisonment on each count was no doubt harsh and excessive in the circumstances. I therefore set the same aside and substitute with sentence of the period already served which is one year and 4 months. Appellant be set at liberty forthwith unless otherwise legally held.

Dated this 13<sup>th</sup> June 2006.

KABURU BAUNI

**JUDGE**

Cc – Mobisa

Mr. Kemo for State

Appellant present