



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Appeal 279 of 2005

(From Original Conviction and Sentence in Criminal Case No.8744 of 2004 of the Chief Magistrate's Court at Kibera)

EDWIN OTIENO OKETCH.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

EDWIN OTINEO OKETCH is challenging the conviction for the offence of **Stealing from person contrary to Sec.279(a) of Penal Code** and to sentence of five years imprisonment.

The complainant was walking in an open field when two men tackled him, took his mobile phone which was in his pocket and 100/= and left him fallen on the ground. The complainant could not identify the thieves. The next day the Appellant found him at his workshop and offered to sell the complainant's mobile phone to him. The complainant was able to identify the phone by its serial numbers which he checked against the receipt for the said phone. The Appellant was then arrested and charged.

In his defence the Appellant said he was given the phone by another for a loan of 2000/=. He did not comment on the offer to sell it to the complainant. The Appellant challenges the conviction for the offence on grounds the complainant stated clearly that he could not identify anyone. The Appellant also challenged the rejection of his defence.

Mrs Kesera for the State opposed the appeal. The learned State Counsel submitted that the Appellant was required to give an explanation for his possession of the phone and that the one he gave was inconsistent with innocence.

I have carefully considered this appeal and I have analyzed and evaluated afresh all the evidence adduced before the trial Court. Having evaluated the evidence afresh I do not find any merit in the appeal against the conviction. The Appellant was found with the complainant's mobile phone one day after it was stolen from him. Even though the complainant did not identify the Appellant as one of the two men who robbed him, I find that the doctrine of recent possession applied to the case, the Appellant had the complainant's recently stolen mobile phone. The complainant positively identified the mobile phone as his using serial numbers.

On the other hand the Appellant's explanation that he was given the phone as security for money lent did not exonerate him because he was trying to sell the phone. The phone could not have been both security and for sale. I agree with the learned trial magistrate's decision to dismiss the Appellant's appeal.

As regards sentence the Appellant was sentenced to five years imprisonment. He was a first offender and the item stolen from the complainant was recovered. I will therefore reduce the sentence from five years imprisonment to three years. Subject to the reduction of sentence as ordered, the Appellants appeal stands dismissed.

DATED AT NAIROBI THIS 13TH DAY OF DECEMBER, 2006.

J. LESIIT

JUDGE

Read Signed and Delivered in the presence of:-

Appellant

.....for State

Wambui Court Clerk

J. LESIIT

JUDGE