

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 65 of 2002

(Appeal from the original Conviction and Sentence in Criminal Case Number 352 of 2001 dated 13th September 2001 in the Senior Resident Magistrate's Court at Kigumo by P. Mwangulu – D.M. 1)

PAUL MUIGAI MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Paul Muigai Mwangi hereinafter referred to as the appellant was tried and convicted by the District Magistrate Kigumo for the offence of Robbery Contrary to Section 296 (1) of the Penal Code. It was alleged that on the 24th day of April 2001 at Miruri village in Maragua District of Central Province jointly with another not before the court He robbed Stephen Macharia Kamau of cash Kshs.25,000/=.

During the trial in the lower court, 3 witnesses testified for the prosecution. In a nutshell the prosecution evidence was that on the material day, the Complainant who is a teacher at Kahiga Primary School went to the Bank and withdrew Kshs.27,000/-. He then went to Gacharage Trading Centre where He visited Stage Bar. He bought drinks for himself and other people including the appellant who also entered the Bar. Thereafter the Complainant went into a shop and then to another Bar but became suspicious of the Appellant who kept following the Complainant around. When the Complainant boarded a vehicle to go home, the appellant also boarded the same vehicle.

The complainant alighted from the vehicle on reaching his destination. The Complainant, John Macharia Njenga (P.W.2), one Ndirangu and the appellant all alighted at the same place. As they were walking in the darkness the appellant put his hands in the Complainant's pocket, but the Complainant protested. They then reached the Appellant's home, the Appellant did not however enter his home but decided to escort the others upto a shop belonging to one Macharia.

The complainant and P.W.2 parted company a short distance away. About 100 Metres ahead the Complainant was attacked by two people one of whom held him and removed Kshs.25,000/= from his pocket. During the struggle the Complainant identified the person who removed the money from his pocket as the Appellant. He was sure that it was the Appellant as He recognised his voice as He told the Complainant to remove the money quickly.

After He was robbed the Complainant went to his home and alerted his family and other villagers about the robbery. The Appellant was immediately confronted but He denied having been involved in the robbery. The Appellant was taken to Gacharage Police Station where He was charged.

The Appellant in his unsworn defence denied having committed the offence. He explained how He met the Complainant who bought him some beer. The Complainant was in the company of 8 women. The Complainant then claimed that his money had been stolen. The trial Magistrate believed and accepted the evidence of the Complainant convicted the Appellant and sentenced him to serve a term of 5 years imprisonment.

I have carefully reconsidered and evaluated the evidence which was adduced by the Appellant. It is evident that the Appellant was well known to the Complainant and that the two were together during the night of the robbery. The conduct of the appellant was not only indicative of an ulterior motive, but the Complainant clearly identified him through his voice. I am satisfied that there was sufficient evidence to support the Appellant's conviction. I therefore find no merit in this appeal and dismiss the same in its entirety.

Dated, signed and delivered this 4th day of December 2006.

H. M. OKWENGU

JUDGE