



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NYERI  
CRIMINAL APPEAL 213 OF 2002**

**JOHN MWANGI KAMWARO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

***(Appeal from Original Conviction and Sentence in Chief Magistrate's Court Criminal  
Case No. 192 of 2002 dated 3<sup>rd</sup> April 2002 by M. R. Gitonga – S.R.M. – Nyeri)***

**J U D G M E N T**

John Mwangi Kamwaro hereinafter referred to as the Appellant was tried and convicted by the Senior Resident Magistrate Nyeri for the offence of Robbery with violence contrary to section 296(2) of the Penal code. He was sentenced to the mandatory death penalty and has now appealed against both his conviction and sentence.

The particulars of the charge against the Appellant were that on the 7<sup>th</sup> January 2002 jointly with others not before the court while armed with offensive weapons namely knives, they robbed Beth Wanjiku Mwangi (hereinafter referred to as complainant) of cash Kshs.300/= and one Siemens Mobile phone all to the total value of Kshs.5,800/= and at or immediately before or immediately after the time of such robbery used actual violence to the said complainant.

During the trial six witnesses testified in proof of the prosecution case. Briefly their evidence was as follows:

On the material day the complainant who is a shop attendant along Kimathi way in Nyeri, left her place of work at 6.00 p.m. As she was walking along Grogon Road, a lady obstructed her. Three men then attacked the complainant one holding her neck and the other two removing the complainant's siemens M30 mobile phone and Kshs.300/= from her pocket. The men were armed with a knife which scratched the complainant on the face during the robbery. The three men and the lady then disappeared. The complainant recognised the lady who obstructed her and one of the three men as persons who had frequently visited the shop where she works. The Complainant identified the man as the Appellant.

On 9<sup>th</sup> January 2002 the Appellant approached Stephen Wahome Wageni (P.W.3) and asked him for a loan of Kshs.1,000/=, P.W.3 said he did not have the money. The Appellant then informed him he was desperate for the money and had a Siemens M30 mobile phone which he was ready to sell. P.W.3's brother one Maina who was present informed the Appellant that there was someone interested in buying the phone. Maina took the mobile phone to Rose Muthoni Muriithi (P.W.2) who bought it at a price of Kshs.1,000/=.

On Sunday 13<sup>th</sup> January 2002, the complainant was given a lift by her employer Nicholas Kigo

Wambugu (P.W.4) when she spotted the lady who had obstructed her and the Appellant walking in the street. She alerted P.W.4 who stopped the vehicle. They managed to apprehend the Appellant, but the lady escaped. The Appellant was escorted to Nyeri police station where he was re-arrested by P.C. Thomas Muriuki (P.W.5).

Upon interrogation the Appellant led P.W.5 to P.W.3 who identified P.W.2 as the person who had bought a Siemens, M30 mobile phone offered for sale by the Appellant. On interrogation P.W.2 produced the Siemens M30 mobile phone which was identified by the complainant as hers. The Complainant produced a receipt for the purchase of the Siemens M30 mobile phone which receipt contained a serial number corresponding with that on the phone recovered from P.W.2.

The complainant was later examined by P.W.6 Michael Ocholla a clinical officer who noted that the complainant had a swelling on the neck which was tender and that her left cheek was also tender. He classified the degree of injury as harm. The Appellant was therefore charged with the offence of Robbery with violence contrary to section 296(2) of the Penal Code.

In his defence the appellant gave a sworn statement in which he claimed that the complainant and her employer had a grudge against the Appellant because the Appellant refused to buy stuff for hawking from them. He claimed that P.W.3 was the one arrested with the mobile phone but he was released. He denied having sold the mobile phone to P.W.2 or knowing Wahome i.e. P.W.3.

In her judgment the trial magistrate found that the Complainant not only recognised and identified the Appellant as one of the persons who robbed her, but the Appellant led the police to recovery of a siemens M30 mobile phone which was positively identified by the complainant as hers, and that the Appellant was identified by P.W3 as the person who offered the Siemens M30 mobile phone for sale. The trial magistrate therefore rejected the Appellant's defence and found him guilty of the offence as charged.

In his grounds of appeal the Appellant complained that the trial magistrate erred in convicting him relying on the evidence of a single identifying witness. He complained that the burden of proof was wrongly shifted on him and that he was not given the benefit of doubt. The Appellant maintained that the case against him was a fabrication actuated by a grudge and that the trial magistrate erred in rejecting his defence.

We have carefully reconsidered and evaluated the evidence against the Appellant. The offence occurred in the evening when there was still sufficient light to enable the complainant see her assailants. The Complainant recognised the Appellant and the lady who obstructed her as they were persons familiar to her as she had seen them previously in the shop where she was working.

The complainant was able to identify the two when she saw them again 5 days after the robbery. It is evident that the complainant could not have been mistaken in her identification as when interrogated the Appellant led the police to the recovery of a siemens M30 mobile phone which complainant positively identified as hers through the cash sale receipt which bore the same Serial Number as the recovered mobile phone.

The Appellant's fate was further sealed by the evidence of P.W.3 to whom he had earlier offered the Siemens M30 mobile phone for sale. In the light of such clear evidence implicating the Appellant the trial magistrate was right in rejecting his defence. We are satisfied and do find that the ingredients for the offence of robbery with violence contrary to section 296(2) of the Penal Code were established as there was evidence that the Appellant was in the company of 3 other persons and that at least one of them was armed with a knife. We find that there was sufficient evidence to sustain the conviction of the Appellant.

Accordingly we uphold the conviction and sentence and do dismiss the appeal in its entirety.

***Dated signed and delivered this 9<sup>th</sup> day of November 2004***

**J. M. KHAMONI**

**JUDGE**

**H. M. OKWENGU**

**JUDGE**