

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 37 OF 2003

JOHN MWANIKI NJAGI.....APPELLANT

-VS

REPUBLIC..... RESPONDENT

JUDGEMENT

John Mwaniki Njagi, the Appellant herein is aggrieved by the judgement of the RM Runyenjes of 21st March 2003 in which he was convicted of the offence of stealing from The person contrary to section 279(a)PC and sentenced to 18 months imprisonment and 3 strokes of the cane.

Learned state counsel has conceded the appeal on the ground that although the Appellant was charged with stealing the pulse, Kshs.500/- and a watch, only the purse was recovered and the court was not told of what became of the watch. The state counsel was also persuaded that the conviction was not safe as there was only the evidence of PW3 that the Appellant was in the court where offence took place.

I have considered and re-evaluated the evidence. It is clear that both the pulse and the watch were recovered and produced in evidence. Learned state counsel was not therefore correct in saying that the court was not told of what became of the watch.

The evidence of PW3 was clear that he saw the Appellant whom he knew before dip his hand into the complainants handbag and remove something. She alerted the complainant who check her bag and finding her purse missing quickly rushed out and pursued the Appellant. The trial Magistrate who saw the witness and assessed their demeanor believed the evidence of PW3 that he did see the Appellant in the court. The trial magistrate found this witness truthful and I have no reason to fault him In any case the evidence of the 3 prosecution witness was consistent. Though upon being searched the purse was not recovered on the person of the Appellant, it was recovered a few meters from where he was thereby giving the impression that he threw it away immediately open realizing that he was being followed. The fact that the 500/- alleged to have been stolen was not recovered in the purse does not in any way contradict the complainant's evidence that she had 500/- in the purse as the Appellant could similarly have thrown the money which could easily have been picked by someone else who did not declare it.

In my considered opinion the evidence before the trial magistrate was sufficient to prove the charge. I therefore uphold the conviction.

As for the sentence of 18 months and 3 strokes the same was not manifestly excessive as to warrant interference by this court.

I find that this appeal has no merit and do dismiss it on its entirety.

HANNAH OKWENGU

JUDGE

7/11/03

Dated signed and delivered in open court.

HANNAH OKWENGU

JUDGE

7/11/03