



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO. 69 OF 2000**

(From Original Conviction and Sentence in Criminal Case No. 126 of  
 1999 of the Senior Resident Magistrate’s Court at Kangundo: C. D.  
 Nyamweya Esq. on 24.4.2000)

**LEONARD MUTUA MWINZI ::: APPELLANT**

**VERSUS**

**REPUBLIC ::: RESPONDENT**

Coram: J. W. Mwera J.

Appellant not wishing to be present  
 Orinda State Counsel for Respondent  
 C.C. Muli

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**JUDGEMENT**

The appellant was charged with others under S. 296 (1) Penal Code in that on 11.3.99 at about 1.30 a.m. at Donyo Sabuk, Kiboko Machakos, jointly with others not before court they robbed one Michael Kamau Kaguru of cash and personal property all valued Sh.2430/= and that immediately before or during he said robbery actual violence was used on Kaguru.

After a trial appellant was convicted and ordered to serve 4 years imprisonment, suffer 4 strokes of the cane and remain for 5 years after release under police supervision. He appealed saying that he was not positively identified and that no incriminating (stolen) item was found in his possession. And that the sentence was harsh.

The Learned State Counsel supported the convictions and found the sentence lenient.

This court is satisfied on reviewing the lower court file that the appellant was among those who robbed the complainant – P.W.1.

P.W.1 was visiting Samuel Mutua Wambua (P.W.2) on the night in issue. There were drinks and the appellant with others were seen walking about P.W.2 premises. P.W.1 went to sleep in a room of accused 1 (not appealing) in which he was attacked and robbed. The complainant who recognized the appellant had earlier seen and noticed him in his white attire. He had ran away from the scene as per P.W.2 who came to the scene nearby when P.W.1 raised alarm. The appellant had taken local brew in P.W.2’s house

that day – where the other co-accused were also present. P.W.2 knew the appellant with the others and the story the Learned Trial Magistrate believed was that the accused 1, in whose house the complainant was sleeping when he was attacked, had been talking with the appellant during the drinking. Accused 1 on interrogation revealed that she with her other two co-accused including the appellant robbed P.W.1. When the other co-accused was apprehended the day following the robbery he (accused 2 again not appealing ) was wearing P.W.1's shoes and clothes! From the whole set of circumstances the Learned Trial Magistrate found that the appellant with his two co-accused robbed P.W.1. That Accused 1 had tricked P.W.1 to go and sleep in her house she then arranged with her two (2) co-accused including, the appellant to rob P.W.1. It was at night but the flow of things is such that the appellant was involved. The whole act took 15 minutes.

This court is unable to differ with that finding and conclusion. The conviction was in order and the sentence deserved.

This appeal is dismissed.

Judgement accordingly.

Delivered on 18.6.2001.

**J. W. MWERA**

**JUDGE**