

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO.41 OF 199

From Original Conviction and Sentence in Criminal Case No.4340 of 1998 of the Chief
Magistrate's Court at Mombasa – B. Maloba, Ag. SRM)

JOSEPH IRUNGU MUTURI APPELLANT
- versus -
REPUBLIC PROSECUTOR

J U D G E M E N T

The appellant was charged with the offence of stealing from the person contrary to section 279(a) of the Penal Code. In that on 17-12-98 at Mwembe Tayari area in Mombasa within Coast Province stole a wallet containing cash KShs.1,200/-. ID Card and leaving certificate all valued at KShs.1,200/- the property of Anjeline Kitana from the person of the same Anjeline Kitana. The complainant said that on 17-12-98 at about 11.30 a.m. she alighted at KFA but noticed appellant following her. He cut her handbag, took the purse inside and gave it to another person who escaped with it. In the purse was KShs.1,200/-. She caught appellant immediately with the help of members of the public and took him to the police station. In his unsworn statement the appellant said he was just caught in the middle of rampage where people were running about and then a woman came and said that he had cut her bag, but when he was taken to the police station he unfortunately met a police officer who had grudges against him. The learned Senior Resident Magistrate believed the prosecution and convicted him. He now appeals on two major grounds. First that the identification was not proper as there was stampede and rampage and confusion reigned everywhere where anyone could be mistaken as the bag snatcher. He also appeals against sentence. Mrs. Mwangi, Senior State Counsel however supported the conviction and the sentence.

Looking at the evidence, it is noteworthy that the appellant was caught immediately after he cut the handbag and it was as the magistrate found that the complainant kept him under her gaze. The learned magistrate found this as a fact and there is nothing to make this appellate court differ from that finding. PW.1 saw the appellant take out the purse and had seen him following her for a distance. Besides in his defence he did not raise the defence of identification at his trial. Of the sentence the law is that the appeal court can only interfere with the discretion exercised by the trial court in sentence if that court has based its decision on wrong principle or where the sentence awarded is manifestly excessive or so low as to be an application of wrong principle. It is not enough that the appeal court thinks that it would have awarded a different sentence.

I have considered the sentence and I believe it is on the higher side but still I am unable to disturb it. I support the conviction and sentence.

Appeal against both conviction and sentence are hereby dismissed.

Right of appeal to Court of Appeal in 14 days.

Dated this 14th Day of September, 2000.

A.I. HAYANGA

J U D G E

Read in open court in the presence of:

Miss Kwena , State Counsel for the Prosecution.

Appellant in person.

A.I. HAYANGA

JUDGE