



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**CRIMINAL APPEAL NO 20 OF 2014**

**(Appeal from original conviction and sentence in Murang'a CM Criminal Case No 511 of 2013 – J Masiga, RM)**

**JOSPHAT KANGETHE MWANGI .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

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

1. The Appellant herein, **Josphat Kang'ethe Mwangi**, was convicted after trial of **simple robbery** contrary to **section 296(1)** of the **Penal Code**. It was alleged in the charge that on 20<sup>th</sup> July 2013 at about 9.30 p.m. at Mukuyu Trading Centre in Marangi Sub-Location within Murang'a County, he robbed one **Edward Mwangi Mucheke** of cash KShs 700/00 and a pair of shoes valued at KShs 1,000/00, and that at, or immediately before or immediately after the time of the robbery he threatened to use actual violence to the said complainant. He was sentenced to serve seven (7) years imprisonment. He has appealed against both conviction and sentence.

2. In the grounds of appeal set out in his petition filed on 01/03/2014 the Appellant complains –

(i) That the stolen shoes recovered from him were brought to him by the thief (who was known to him) to sell them for him, and that therefore he should have been charged with handling stolen property.

(ii) That the evidence adduced by the prosecution was Contradictory, inconsistent and trumped up.

(iii) That the trial court was biased against him.

3. In his amended grounds of appeal tendered at the time of hearing of the appeal the Appellant added the following complaints –

(i) That the charge of robbery was not proved because “I had no weapon”.

(ii) That the prosecution witnesses were not credible.

(iii) That the Appellant's and the complainant's families had a long-standing grudge which the trial court did not take into account.

The Appellant also tendered written submissions which I have read and considered.

4. Learned prosecution Counsel for the Respondent supported the conviction and sentence. He submitted that the charge was proved beyond reasonable doubt in that there was moonlight by which the complainant clearly saw the Appellant whom he knew well as they had grown up together, and that the pair of shoes stolen from the complainant was recovered four days after the robbery while in the Appellant's possession.

5. I have read through the record of the trial court in order to assess the evidence and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have borne in mind however that I neither heard nor saw the witnesses, and I have given due allowance for that fact.

6. The complainant testified that at about 9.30 p.m. on 20/07/2013 he was walking home from work. The night was moonlit. He met the Appellant who wrestled him to the ground and then stole from him a pair of shoes he was carrying in a paper bag and also KShs 700/00 which was in his pocket. He recognized the Appellant in the moonlight because he knew him well as they had grown up together. The following day he reported the robbery at the local chief's camp near his home. He identified in court the shoes that were stolen from him. He had bought them the day he was robbed.

7. PW2 (an assistant chief) received the complainant's report of the robbery. After 2 days he heard that the Appellant (whom he knew) had been seen with shoes that were not his size. He went to the Appellant's home two times without finding him there. So, on 26/07/2013 he and others raided the Appellant's home at 5.30 a.m. They found him asleep. He arrested him and handed him to a police officer (PW3) whom he had called to the scene after he recovered the shoes hidden in the Appellant's mother's bathroom.

8. PW4 was a police officer attached to Murang'a Police Station. The Appellant was handed over to him after his arrest. He then commenced investigations of the case. He produced in evidence the pair of shoes recovered from the Appellant. He also stated that the Appellant's explanation for his possession of the pair of shoes was that he had found the complainant lying somewhere on the road with the shoes there, and that he has taken the shoes.

9. The Appellant gave an unsworn statement in his own defence. He did not call any witness. He denied that he had attacked and robbed the complainant as alleged. He also stated that the complainant's family was not in good terms with his, and as a result he was not in good terms with the complainant. He stated further that about four years previously the complainant had assaulted him when he had gone to enquire why he and others had assaulted his (Appellant's) sister. He finally stated that the complainant and PW2 were brothers, and that the latter had promised to have him arrested in order to annoy his (Appellant's) parents.

10. Upon my own evaluation of the evidence placed before the trial court I am satisfied that the Appellant attacked and robbed the complainant as charged. He wrestled the complainant to the ground. There was moonlight and the complainant was able to recognize him as he knew him well, having grown up together with him.

11. Recovery of the pair of shoes (very recently stolen from the complainant) in the Appellant's possession corroborated the complainant's testimony. The Appellant's allegations in his unsworn statement about a previous grudge between his and the complainant's families were an afterthought, as were the allegations about a previous assault upon him by the complainant, and PW2's alleged threat to him. He never cross-examined the complainant and PW2 about these things.

12. I find that the charge against the Appellant was proved beyond reasonable doubt. He was properly convicted, and the conviction cannot be faulted. The sentence was also clearly merited.

13. In the event I find no merit in this appeal. It is hereby dismissed. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 6<sup>TH</sup> DAY OF APRIL 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 7<sup>TH</sup> DAY OF APRIL 2017**