



**Republic v Mutwiri (Criminal Case E005 of 2024)
[2024] KEMC 113 (KLR) (28 May 2024) (Judgment)**

Neutral citation: [2024] KEMC 113 (KLR)

**REPUBLIC OF KENYA
IN THE GAITU LAW COURTS
CRIMINAL CASE E005 OF 2024
AT SITATI, SPM
MAY 28, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

EPHANTUS MUTWIRI ACCUSED

JUDGMENT

1. The accused person denied the charge of stealing from a person contrary to section 279(a) of the [Penal Code](#). The particulars were that on 9th January, 2024 at 6pm at Kaguma market within Imenti Central Sub-County of Meru County he stole cash Kshs 10, 000 the property of Lilian Gaceri Marete.
2. In the alternative count, he denied the charge of handling stolen property contrary to section 322(2) of the [Penal Code](#). The particulars were that on 9th January, 2024 otherwise than in the course of stealing dishonestly received or retained Kshs 400/= knowing that or having reason to believe the same to be stolen property.
3. He denied Count III for the offence of failing to register as a Kenyan Citizen contrary to section 5 of the [Registration of Persons Act](#). the particulars were that on 9th January, 2024 at Kaguma market being adult was found not having registered as a Kenyan citizen.
4. The accused person represented himself at this trial which was conducted by Prosecution Counsel Kimathi Kibiti.

TheDPP'S Case

5. PW1 Lilian Gaceri Marete told the court that on 9th January, 2024 one of her barmaids at her bar asked her for loose change so that it could be used to give clients within the bar. PW1 said that she delivered the loose change in coinage and small denominations totalling Kshs 10, 000/= in pouch and handed it over to the barmaid before stepping out.



6. The witness added that no sooner had she stepped out of the bar than she heard a loud commotion behind her. This made her to go back to the bar. On re-entering the bar, she found that the accused person had grabbed the money pouch from the barmaid who had in turn jumped on him to restrain his escape. In the melee, the cash fell to the floor and revellers in the club scrambled for the coins and cash before vanishing. The accused grabbed Kshs 400/= and he was found with this cash when the police showed up.
7. In cross-examination, the following came to light:
 1. The accused person turned hostile and unruly towards PW1 when she confronted him.
 2. Revellers scrambled for the cash when the coins were strewn on the floor.
8. PW2 Hellen Gatwiritold the court that she was one of the barmaids on duty at Wayside Bar owned by PW1. She added that she requested PW1 for loose change which PW1 duly brought over and handed to her in a pouch.
9. According to PW2 no sooner had the boss left the bar than the accused person who had been drinking liquor in the bar lunged at and grabbed PW2 before snatching away the pouch containing the cash. In response, PW2 jumped on and held onto the accused tightly leading to a tussle. In the commotion, the pouch dropped to the floor spilling out its contents. Revellers in the bar scrambled for the coins and cash. The accused managed to retain only Kshs 400/= in coinage.
10. In cross-examination, the following came to light:
 1. There was bright electricity lighting in the bar which enabled PW2 to see and identify the accused person.
 2. PW2 intercepted the accused person immediately after he had grabbed and snatched the money pouch.
 3. Earlier, the accused person had taken beer worth Kshs 120/= and had not paid for it.
11. PW3 S/no. 91695 PC Samson Mindotitestified as the investigating officer. He told the court that on 9th January, 2024 at 5:15pm he accompanied PC Murimi to Wayside Bar to respond to the call by PW1 for help to arrest a thief who was the cornered in the Wayside Bar. PC Mindoti added that on arrival at the bar, he found that the Accused person cornered at the bar. He had a small pouch containing KSHS 400/=. The complainants explained that the accused had snatched the purple coloured money bag from the barmaid but he was intercepted in the nick of time and put under arrest.
12. PC Mindoti re-arrested the accused person and brought him to court after recording the witnesses' statements. He produced the purple money bag and cash Kshs 400/=. At the end of his testimony the DPP closed their case whereupon the court ruled that he had a case to answer.

The Defence Case

13. The Accused Person Gave anUnsworn Statementand called no witnesses. He told the court count III of failing to register has no basis as he had his ID Card number 347*75. As for the stealing charges, he told the court that his only mistake was to quarrel with the barmaid over his change of Kshs 900 which she had refused to refund him. He asked the court to consider that while it was true that PW1 brought over the coinage as change for the LOTTO machines, it was PW2 who refused to refund his change leading to a verbal exchange of words. He added that the 2 officers were within the bar premises and quickly pounded on him without giving him an opportunity to explain to them what had just taken place. At that stage, he then closed his defence.



14. The duty of the court is to determine whether the DPP has proved the charges beyond any reasonable doubt.

Determination

Count1: Stealing From The Person

15. The Accused person has been charged under section 268 as read together with section 279 of the [Penal Code](#) which provide:

268.(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property.

(2) A person who takes anything capable of being stolen or who converts any property is deemed to do so fraudulently if he does so with any of the following intents, that is to say –

- (a) an intent permanently to deprive the general or special owner of the thing of it;
 - (b) an intent to use the thing as a pledge or security;
 - (c) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
 - (d) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;
 - (e) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner;
- and “special owner” includes any person who has any charge or lien upon the thing in question, or any right arising from or dependent upon holding possession of the thing in question.

279. If the theft is committed under any of the circumstances following, that is to say –

- (a) if the thing is stolen from the person of another;
...the offender is liable to imprisonment for fourteen years.

16. By the established evidence in the cross-examinations of the DPP’s witnesses as weighed against the unsworn statement, the court is satisfied that the accused person made a money-grab and dash move on the barmaid. He snatched the money bag and dropped it when he was intercepted promptly by the said barmaid causing the coins to scatter on the floor. He was caught within the precincts of the Wayside Bar where he had committed the offence. He came, he grabbed but she conquered him just like it was in the Oceans 11 movie!

17. The offence of stealing by snatching which constituted taking without any colour of right was completed and proved the moment the money bag containing the coins left the hands of PW2. This criminal behaviour caused other bar clients to scramble for the scattered coins and this further aggravated the offence.

18. In the result, he is guilty as charged and is convicted. His defence that it was a made up case was unsupported by the totality of the evidence. In his unsworn statement he supported the DPP’s case to extent that he confirmed that there was interaction between him and the barmaid that evening and



that money was involved. He is found guilty under section 215 of the *Criminal Procedure Code* and is convicted accordingly. Right of appeal is 14 days.

Count II: Failing To Register

19. On this charge, he has proved that he was duly registered as a Kenyan citizen as per the Identity card numbers presented to the court during the defence hearing which numbers were not controverted by the DPP. In the result, he is acquitted of count II under section 215 of the *Criminal Procedure Code*. Right of Appeal is 14 days.

DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 28TH DAY OF MAY, 2024.

HON. T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

Present

Accused person

DPP Kibiti

Ronny and Brian Court Assistants

