



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO. 722 OF 1984**

**(From Original Conviction and Sentence in Criminal Case No. 613 of 1984 of the Chief Magistrate's Court at Nairobi: J Mwera Esq.)**

**PETER KINYUA KIBOTHE .....APPELLANT (Original Accused No. 2)**

**v e r s u s**

**REPUBLIC .....RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO. 738 OF 1984**

**(From Original Conviction and Sentence in Criminal Case No. 613 of 1984 of the Chief Magistrate's Court at Nairobi: J Mwera Esq.,)**

**ALBERT MBUGUA KANYUA .....APPELLANT (Original Accused No. 1)**

**v e r s u s**

**REPUBLIC .....RESPONDENT CORAM: O'KUBASU J Kiraitu Murungi for Appellant Peter,  
(Original Accused No1)**

**Appellant, Robert, (Original Accused No. 2) Absent, not wishing to be present, A K Nyairo (State Counsel) for Respondent.**

**JUDGMENT**

The two appeals have been consolidated. The appellants were convicted of robbery contrary to Section 296 (1) of the Penal Code and each sentenced to 30 months imprisonment and corporal punishment plus police supervision for a period of five (5) years on expiry of prison sentence.

Omolo Omondi Ooko (P.W.I) was along Jogoo Road on 11th February, 1984, at about 7 p.m. when

he was confronted by two people who knocked him down and stole his 5/-. P.w.1 recognized those who robbed him to be the two appellants, Kimanzi Nzelu (P.W.2), who witnessed p.w.1 being robbed, testified that he recognized the two appellants. The two appellants were arrested and then taken to the police station. Mairu Muthiga (P.W.3) was one of those who witnessed this incident and he too identified the two appellants.

Mr Kiraitu, for one of the appellants submitted that it was not proved that shs.5/- had been stolen since none of the appellants was found in possession of this money. Mr Kiraitu also referred to what he considered to be contradictions in the evidence of prosecution witnesses.

I have considered the evidence on record and it is clear that the incident took place in the evening along Jogoo road, where street lights were on. The complainant (P.W.1) testified that he saw the two appellants properly. Then p.w.2 and P.W.3, testified that they saw the two appellants on top of p.w.1 after P.W.1 had been knocked to the ground. I have considered the authorities cited by Mr. Kiraitu, but I find that this was a straightforward case in which the two appellants were caught in the act of committing the offence of robbery. They were clearly identified by three witnesses (p.w.1, p.w.2 and p.w.3) under favorable conditions. As regards the missing 5/- I would only say that the two appellants had opportunity to throw it away, before they were finally apprehended. Indeed, one of the appellants ran far a distance before he was arrested.

In my view, the appellants' conviction was inevitable. They set upon an old man and molested him. The fact that only 5/- was involved should not overshadow the fact that this was a robbery. The learned trial magistrate considered all the relevant circumstances of the case, before choosing the sentence, that he imposed on each appellant. The sentence cannot be described as manifestly excessive. The circumstances of the case justified the sentence imposed. In imposing sentence the court considers among other things the attitude of the offender, type of the offence in question, its seriousness prevalence and the circumstances under which the offence was committed. I am satisfied that the sentence imposed was appropriate.

The upshot of the above is that, these appeals are dismissed in their entirety. Order accordingly.

**Delivered at Nairobi, this 14th day of December, 1984.**

**E O'KUBASU**

**JUDGE**



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