



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLANT SIDE

CRIMINAL APPEAL NO. 439 OF 2002

(From Original Conviction and Sentence in Criminal Case No. 675 of 2002  
of the Chief Magistrate's Court at Mombasa – J.S. MUSHELLE ESQ; -  
SPM).

KYALO MBITHI PIUS.....PROSECUTOR

-VERSUS

REPUBLIC..... PROSECUTOR

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

In this appeal the appellant on 20.3.2002 pleaded guilty to the charge. However the facts of the charge were never put to him and he did not admit the same.

On 17.9.2002 the hearing commenced and witnesses were called. Four witnesses in all gave evidence. The appellant was thereafter put on his defence. He stated in unsworn statement that he was arrested by the complainant and taken to Police Station where he was charged. He then denied the charge.

He now complains that the case was not proved beyond reasonable doubt and that his defence was not considered. He also complains that the evidence of PW1, PW2 and PW4 was not sufficient to sustain the conviction. Furthermore there was poor investigation and there was discrepancies and uncorroborated evidence. I have perused the evidence of the Prosecution the complainant claimed that his mobile phone was stolen from him in daylight. His attackers ran away but he chased them until the appellant was caught. The mobile phone was recovered from him and it was identified in court as the property of the complainant. This is the link connecting the appellant with this offence. He did not deny or mention that the mobile, which was found in his trouser pocket, was not stolen property

A close-examination of his statement shows that he was beaten this confirms the evidence of witness that the appellant was beaten by members of the public. It is also shown that he was arrested at the place where vehicles are washed (PW3).

Upon consideration of all the evidence I find that at no part of trial was appellant required to prove his innocence. However his statement goes a long way to confirm the prosecution evidence and the recovery of the mobile on his person confirmed that he was the thief. The evidence is firm and consistent.

I find that the conviction was reached on sufficient evidence. No irregularity in the trial can be noted. The trial magistrate correctly put the appellant on trial though he had pleaded guilty because the particulars of the offence were never put to him. In the circumstances I find no merit in the grounds of appeal. I confirm the conviction and sentence.

The upshot is that the appeal is dismissed.

**Dated this 22nd day of December 2003.**

**JOYCE KHAMINWA**

**JUDGE**

Read in the presence of: Appellant

Miss Mwaniki

In open court on 22nd day of December 2003.

**JOYCE KHAMINWA**

**JUDGE**



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