REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)
Criminal Appeal 19 of 2005

(From Original Conviction and Sentence in Criminal Case No.453of 2005 of the Chief Magistrate's Court at Makadara – Mrs. Mbugua -RM).

EVANS MWANGI BWOVONYA ……..…….....……..…..APPELLANT

VERSUS

REPUBLIC…….…….....……..….RESPONDENT

JUDGMENT

EVANS MWANGI BWOVONYA, the Appellant herein was charged with stealing from a person contrary to Section 279 (a) of the Penal Code. The particulars of the charge were that on 8th January, 2005 at Machakos Country Bus Station Nairobi within Nairobi Area, jointly with others not before Court stole one Sony Erickson mobile phone valued at Kshs.5,000/= the property of ***JANET KANINI ALPHONCE*** from the person of the said ***JANET KANINI ALPHONCE***. The Appellant pleaded guilty to the charge and was accordingly convicted and sentenced to 4 years imprisonment.

The facts as narrated to the trial Court and admitted by the Appellant were that the:-

*"……**Complainant was operating her mobile phone while along Tom Mboya. They were surrounded by a group of men and accused snatched the phone valued at Kshs.5,000/=. They then ran and but and (sic) was arrested by Police on patrol. Nothing was recovered. Accused was charged….."***

As the Appellant admitted the facts stated the trial Court (Mrs. Mbugua, RM) convicted him. In sentencing the Appellant to 4 years imprisonment the trial Magistrate did not consider his mitigation as none was offered. It is from the aforesaid sentence that the Appellant comes to this Court by way of Appeal. His Appeal is against sentence only. He told me that he was most remorseful and regret the loss suffered by the Complainant, that I should take a favourable view on him on the basis that he had no previous convictions, that he was the only child of his mother who is a widow and solely depend on him and that the sentence imposed was inordinately harsh and severe.

The Appeal was opposed by Mr. Kimathi, Learned State Counsel. He submitted in opposition that the maximum sentence for this kind of offence was 14 years. The Appellant was sentenced to a mere 4 years which according to the Learned State Counsel was very lenient. Counsel pointed out that what the Appellant had submitted in support of the Appeal were really pleas in mitigation. It was an afterthought as the Appellant had been invited by the trial Court before sentencing to mitigate but he elected not to do so. According to Counsel, the offence is rampant. The Appeal should thus be dismissed.

The Appellant having been convicted, on his own plea of guilty, for the offence, was liable to be sentenced to imprisonment for a term not exceeding 14 years as correctly submitted by the Learned State Counsel. The Learned trial Magistrate considered all the circumstances of the case in arriving at the sentence imposed on the Appellant. I have on my part, considered the circumstances under which the offence was committed as well as the mitigating circumstances put forward by the Appellant and it is my view that the sentence imposed was neither harsh nor excessive in those circumstances. The trial Court did not take into account irrelevant considerations nor failed to take into account relevant factors in arriving at the sentence imposed. The sentence was perfectly legal. The Learned trial Magistrate did not exercise her discretion capriciously in arriving at the sentence. See generally ***WANJEMA VS REPUBLIC (1971) EA 493.***

I find no merit in this Appeal and I accordingly order that the same be and is hereby dismissed.

Dated at Nairobi this 31st day of July, 2006

……..

MAKHANDIA

JUDGE