



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO. 146 OF 2011

DAVID MURIITHI MURANILA.....1ST APPELLANT

PAUL WANJOHI KARIUKI.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and sentence made by the learned Senior Principal Magistrate at Nanyuki Law Courts (Hon. J. n. Nyaga) in Nanyuki Senior Principal Magistrate's court criminal case No.1094 of 2010 delivered on 01/07/2011)

JUDGMENT

David Muriithi Muranila and **Paul Wanjohi Kariuki** being the 1st and 2nd appellants respectively, were tried on a charge of robbery with violence contrary to **Section 296 (2)** of the **Penal Code**. At the end of the trial the duo were instead convicted for the offence of handling stolen property contrary to **Section 322(2)** of the **Penal Code** pursuant to the provisions of **Section 188** of the **Criminal Procedure Code**. The appellants were each sentenced to serve five (5) years imprisonment. Being dissatisfied the appellants each filed an appeal. Those appeals were ordered consolidated *suo moto* by this court.

On appeal, the 1st appellant put forward the following grounds of appeal:

1. **That the learned trial Magistrate erred in law by erroneously applying Section 188 of Criminal Procedure Code.**
2. **That the learned trial Magistrate erred in law and in facts by failing to hold according to the prosecution evidence on record the alleged stolen vehicle as per the charge never belonged.**
3. **That the learned trial Magistrate erred in law by grossly misdirecting himself and convicted me on the evidence that prosecution never tendered.**
4. **That the learned trial Magistrate erred in law by reading the Judgment for another different person and purported to be for me.**

The 2nd appellant on his part presented the following grounds:

1. **That the learned trial Magistrate erred in both points of law and fact on basing my conviction on the recovery of the exhibited motor vehicle without considering the circumstances surrounding it's recovery.**

2. **That the learned trial Magistrate erred in both points of law and fact on convicting me on an offence that I was not initially charged with.**
3. **That the learned trial Magistrate erred in both points of law and fact not considering that PW3 the arresting officer did not produce the exhibited motor vehicle during his testimony in court.**
4. **That the learned trial Magistrate erred in both points of law and fact on acting on the evidence of PW3 without considering that there was no other supportive evidence.**
5. **That the learned trial Magistrate erred in both points of law and facts by not giving my defence the considerable weight deserved.**

When the appeal came up for hearing the 1st appellant relied on written submissions. The 2nd appellant presented oral submissions, while Miss. Maundu learned State Counsel made oral submissions to oppose the appeal.

Before delving deeper into the merits or otherwise of the appeal, we wish to give a brief summary of the case that was before the trial court. Five witnesses were called to testify in support of the prosecution's case. **Patrick Muriuki Kinyua** (P.W.1), the complainant was a taxi driver at Nanyuki Township employed by **Samson Githaiga** (P.W.2). It is the evidence of P.W.1 that on 28th May 2010, at around 9.00am he was outside Equatorial Supermarket when he was approached by a customer to take him to Narumoru. That person paid P.W.1 Kshs.1,200 before setting off for Narumoru. On the way, they picked another person. As they drove the customer requested P.W.1 to drive off the road to pick other people. P.W.1 acceded to the request and drove off the road. After driving for 4Kms, the two passengers robbed P.W.1 of Motor Vehicle registration no. KAS 250J. P.W.1 was drugged and abandoned on the road. P.W.1 was also robbed of Kshs.1,200 and his mobile phone. A good lady samaritan gave P.W.1 a lift to Nanyuki town where he contacted his employer (P.W.2). They (P.W.1 &P.W.2) reported the incident to Nanyuki Police Station. On 4th June 2010, **PC Mwanziwe** (P.W.3) received instructions to proceed to the parking yard of Crescent Hotel, Kisumu where Motor vehicle reg.no. KAS 250J was spotted to have been parked. P.W.3 found the aforesaid motor vehicle parked as earlier stated. P.W.3 found the appellants inside the vehicle. He arrested them and placed them in custody at Kisumu Central Police Station. Police from Nanyuki Police Station travelled to Kisumu to pick the appellants where they were charged with the offence of robbery with violence. When placed on their defence, the appellants each denied committing the offence. The 1st appellant said that he was a lorry driver based in Kisumu and that he was arrested while he was charting with his colleague outside Crescent Hotel. The 2nd appellant stated that he had gone to his place of work where he found the 1st appellant. He said he was arrested while he was having a talk with the 1st appellant. Both P.W.1 and P.W.2 stated that they were arrested while they were talking while standing outside the parking yard of Crescent Hotel. The learned trial Senior Principal Magistrate believed the evidence of P.W.2 to be truthful. He concluded that the appellants were actually found inside the stolen motor vehicle. However, since P.W.1 was unable to identify the appellants in an identification parade the trial Magistrate convicted them for the offence of handling stolen property.

We now wish to revisit the appeal. It is the submission of the appellants that since the subject matter of the appeal i.e Motor Vehicle registration no. KAS 250J was not produced in evidence as an exhibit, then it cannot be said that the case was proved to the required standard of beyond reasonable doubt. Miss. Maundu did not address us over this issue. The evidence of P.W.4 and P.W.5 clearly indicates that the stolen Motor vehicle was produced in court as an exhibit. Also produced in court were photographs of the same. P.W.1 and P.W.2 did not produce any evidence proving ownership of the aforesaid motor vehicle. We are unable to comprehend why the prosecution failed to tender such crucial evidence. In the circumstances of this case it was necessary to produce ownership documents in order to sustain a conviction for the offence of handling stolen property. The fact that the motor vehicle together with photographs were produced in evidence as exhibits did not in themselves substitute the evidence of ownership. We are not convinced that the offence of handling stolen property was proved to the required standards. For this single reason, we allow the appeal. The conviction is quashed and the sentence set

aside. The appellants are ordered set free forthwith unless lawfully held.

Dated, signed and delivered this 20th day of February 2014.

.....

J.K.SERGON

JUDGE

.....

J. WAKIAGA

JUDGE