



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

CRIMINAL APPEAL 377 OF 2006

IMRAN KARIUKI NJERU..... APPELLANT

-AND-

REPUBLIC.....RESPONDENT

(An appeal from the Judgement of Senior Principal Magistrate Mrs. R.A. Mutoka dated 17th July, 2006 in Criminal Case No. 2998 of 2004 at the Nairobi Law Courts)

JUDGEMENT

The appellant herein, **Imran Kariuki Njeru**, was charged with the offence of theft of a motor vehicle contrary to s.278(a) of the Penal Code (Cap.63, Laws of Kenya). The charge was particularized as follows. The appellant, on 17th November, 2004 along City Hall Way in the Nairobi Area, jointly with others not before the Court, stole a motor vehicle, Registration No. KAJ 906X, Toyota Starlet valued at Kshs.560,000/=, the property of **Josephat Mbatia Mundia**.

PW1, **Josephat Mbatia Mundia**, a retired army officer living at Kinoo, testified that on 17th November, 2004 he left his home at 6.30 a.m., drove into Nairobi, and parked his car, Toyota Starlet, Reg. No. KAJ 906X along City Hall Way. He walked across into the Law Courts, to follow certain proceedings there. At 8.45 a.m. PW1 left the Law Courts, and headed straight to the place where he had parked his car. He did not find his car, and, after conducting a search along City Hall way, he called the Central Police Station, and thereafter went there to make a report.

PW1 later learned that his stolen motor vehicle was at the Central Police Station in Nyeri. He reported this development to Central Police Station, Nairobi. PW1 was then given a Police officer to accompany him to the Police station at Nyeri, and there, he found his stolen car. PW1 showed **Sgt. Mumo** at the Nyeri Police Station, a photocopy of his logbook, and a copy of his insurance certificate for the stolen motor vehicle. At the Nyeri Police Station, a man was introduced to PW1 who claimed that the said motor vehicle, Toyota Starlet, Reg. No. KAJ 906X was his. This man could not show a logbook for the said motor vehicle, and sought one week's dispensation in order to produce the same. The Police officers, the man claiming the said motor vehicle, and PW1 herein went to the car where it was parked and PW1 was able to switch on the engine using an ignition key which he always had. Inside the stolen motor vehicle there had been PW1's driving licence, his vacuum flask, and his jacket. These items, however, were not found in the said motor vehicle. PW1 was asked to drive the said car upto Nairobi's Central Police Station, with the person who was claiming it, and a Police officer as passengers. The person claiming the said car, that is the appellant herein, was held in the Police cells, while photographs were taken of the motor vehicle.

On cross-examination by the appellant herein, PW1 said he saw the appellant for the first time at Nyeri, on 28th November, 2004 and he did not know where the appellant had been arrested.

PW2, Police Force No. 54808 **Police Constable Joseph Magut** of CID, recalled that on 17th November, 2004 he was at his office when the complainant came to report that his Toyota Starlet Reg. No. KAJ 906X had been stolen along City Hall Way in Nairobi. PW1 had reported that when he looked for the said car at 11.00 a.m. on the material day, the same was missing from the place where he had parked it earlier on. One-and-a-half weeks later the complainant returned to Central Police Station, Nairobi, to report that he had received word that his stolen car was at Nyeri Police Station. PW1 then went to Nyeri in the company of **Police Constable Gichuki**, and drove the vehicle in question to Nairobi, with the said **P.C. Gichuki** and the appellant herein, as passengers. Subsequently, the appellant herein was charged with theft of the said motor vehicle. The complainant had produced a copy of his logbook showing that he was the true owner of the said motor vehicle.

On cross-examination by the appellant, PW2 testified that he was initially the investigation officer in this matter, but subsequently, **P.C. Gichuki** continued with investigations. PW2 had not been involved in the arrest of the appellant herein.

PW3, **Corporal Jackson Wanjohi** of Hihai Police Post, and previously of DC's officer, Nyeri, testified that he was at Nyeri, in the company of one **Sgt. Mumo** on 20th November, 2004 at 4.00 pm. When he received a tip-off that one **Imran Kariuki Njeru alias Karis** was in possession of a stolen car, Reg. No. KAJ 906X, Toyota Starlet, white in colour. PW3 and his colleague did a search in Nyeri Town and at 8.30 pm, found the appellant herein, with the said car. The two officers asked the appellant how he got the motor vehicle; he answered that this motor vehicle had been sold to him (appellant) by one **Njoroge** (not called as a witness). The officers took the motor vehicle to the Police station, and investigations began on the alleged theft of the same. On 26th November, 2004 PW3 travelled to Nairobi, for the purpose of checking the records at the motor vehicles registry; and he confirmed that the registered owner of the subject motor vehicle was **Josephat Mbatia Mundia** (PW1). PW3 retrieved the particulars of PW1, and called PW1 on his mobile phone number, whereupon PW1 gave the registered number of his stolen vehicle as KAJ 906X. PW3 asked PW1 to pay a visit to the DC's office, Nyeri; PW1 did so on 27th November, 2004 and identified his stolen motor vehicle. The appellant herein, on that occasion, could not be found; but PW3 and fellow officers found him at his house on 4th December, 2004, arrested him, and took him to Nyeri Police Station. On 6th December, 2004 PW3 and **Cpl. Gichuki** escorted the appellant to Nairobi, all as passengers of the complainant herein who was driving the subject motor vehicle. PW3 had not known the complainant before this motor-vehicle-theft incident.

On cross-examination, PW3 testified that he had found the appellant standing by the subject motor vehicle, when he first arrested the appellant in connection with the theft incident. The information reaching PW3 which led him to search for and arrest the appellant, was that the appellant had the motor vehicle and was looking for a buyer for it. When asked about the ownership of the motor vehicle, the appellant had told PW3 that it was his property, and had been sold to him by one **Njoroge**. The appellant had asked for time to be able to show PW3 the logbook for the subject motor vehicle. PW3 had confirmed from the true owner that the motor vehicle in question had been stolen.

PW4, Police Force No. 56832 **Corporal Peter Mwangi** of the Scenes of Crime department in Nairobi, testified that **Police Constable Gichuki** (PW5) had shown him a motor vehicle at a garage in the Nairobi Industrial Area, bearing registration number KAJ 906X, a Toyota Starlet, and asked him to take photographs of the same. And PW4 took photographs of the rear and front of the said car, and prepared a report which he duly signed. PW4 produced in Court a booklet of the said photographs, as well as a report on the discharge of his task.

PW5, Police Force No. 51150 **Corporal Amos Gichuki** testified that he had been called, on 6th December, 2004 by **Chief Inspector of Police Maringe**, DCIO Central Police Station, Nairobi who asked him to go to Nyeri, for the purpose of bringing a stolen motor vehicle which had been recovered. When PW5 reported to the OCS, Nyeri, the OCS called the two Police officers who had recovered the stolen

motor vehicle, and introduced them to him. PW5 also met both the complainant and the appellant herein, on that occasion. Sometime later, PW5 returned to Nairobi, accompanied by the complainant and the appellant. As PW5 and the others drove towards Nairobi, the subject motor vehicle broke down; and when they reached Nairobi, the vehicle was taken to a garage for repairs. PW5 had the car photographed by Scenes of Crime officers while it was at the garage. He then visited the Registrar of Motor vehicles, and obtained copies of official records, which showed the true owner of the motor vehicle to be the complainant.

The appellant when put to his defence, elected to make a sworn statement, in which he denied the charge. He testified that although **Sgt. Mumo** and **Cpl. Wanjohi** (PW3) had questioned him on 20th November, 2004 in relation to “a small white vehicle” which was parked outside Kungumaitu Butchery in Nyeri, he was only at that butchery for the purpose of buying meat; he knew nothing about the car. **Sgt. Mumo** told the appellant he and his colleague were looking for the owner of the said motor vehicle; and they allowed him (appellant) to go free.

Then on 4th December, 2004 at 1.00 p.m., the appellant saw the same two officers at his house. This time they arrested him, and had him held at the Police station. After two hours of incarceration, the appellant was called out and asked if he knew the complainant herein, who was introduced to him. After the appellant answered in the negative, he was told that he had stolen the complainant’s car. On 6th December, 2004 an officer from Nairobi Central Police Station came along and escorted the appellant to Nairobi, where he was charged with the offence which is the basis of the appeal herein.

The appellant saw the case against him as a frame-up, actuated by malice on the part of PW3 whom he knew, and with whom he had had a disagreement earlier, on an unrelated matter.

The learned trial Magistrate, in her assessment of evidence, observed that PW3, when looking for the appellant, found him next to the subject motor vehicle, and this was the beginning of the connection of the appellant to the theft of the same. Of PW3’s demeanour as a witness, the trial Court recorded:

“I find that PW3 was a credible and faithful witness, [and he was dutiful too], as he endeavoured to contact PW1 and [to] inform him of the recovery of the motor vehicle...I see no reason, direct or apparent, that would lead me to conclude that [the appellant herein] was framed-up as he suggests...I find that the prosecution has proved the charge against the accused through the doctrine of recent possession....”

After considering the appellant’s criminal record, and hearing the mitigation statement, the trial Court committed him to prison for a term of five years.

In his petition of appeal, the appellant contended that the trial Court had erred in law and fact by accepting incredible evidence; that it was an error of law and fact not to produce the subject motor vehicle in Court; that it was an error of law and fact to accept photocopies as exhibits, during the trial; that the trial Court had ignored the appellant’s defence. The appellant developed the foregoing points in his submissions in Court, urging that the prosecution evidence had been marred by contradictions, and should not have been the basis of a conviction.

In her submissions, learned State Counsel **Ms. Gateru** supported both conviction and sentence. She urged that the evidence on record supported the charge of theft of a motor vehicle.

PW3 had given testimony that he had received an information tip-off that the appellant herein had a recently-acquired motor vehicle, for which he was seeking a buyer. There was sufficient evidence, in the form of photographs prepared by scenes-of-crime officers, showing the image of the subject car. While there was evidence that the person possessing the said car at Nyeri was the appellant, the appellant had no reasonable explanation of how he came to be in possession of a car only so recently stolen from a Nairobi street.

Ms. Gateru urged that, if there were any contradictions in the prosecution evidence, the Court may

regard them as minor, and not going to the root of the State's case against the appellant.

Learned counsel submitted that the appellant, in his defence, had sought to rely on grudge as the reason for charging him with the offence, but his testimony in that regard came only as an afterthought, and had no linkage with the various stages of witness- examination. The trial Court, after considering all the testimony, and taking into account the demeanour of witnesses, had found the defence case to be incapable of dislodging the prosecution case.

I have carefully considered all the evidence, and I find that its main thrust places responsibility for the theft of the subject motor vehicle upon the appellant herein. Witnesses showed clearly that the person in possession of the said motor vehicle at Nyeri, was none other than the appellant herein; but the appellant signally failed to show how he could have come by a motor vehicle only so recently stolen.

Apart from the pointed evidence showing the appellant to be the thief, there is confirmation of that position by the application of the doctrine of recent possession.

I hereby dismiss the appellant's appeal; uphold the conviction entered by the trial Court; confirm the sentence duly imposed.

Orders accordingly.

DATED and **DELIVERED** at Nairobi this 14th day of April, 2008.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Huka

For the Respondent: Ms. Gateru

Appellant in person