



**REPUBLIC OF KENYA**

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

**Criminal Appeal 597 of 2005**

**JOHN NJANJA NJOROGE..... APPELLANT**

**-AND-**

**REPUBLIC.....RESPONDENT**

***(An appeal from the Judgement of Chief Magistrate Mr. W. Muiruri dated 9<sup>th</sup> December, 2005 in Criminal Case No. 2002 of 2004 at Nairobi Law Courts)***

**JUDGEMENT**

The appellant's appeal is against his conviction on the alternative charge of handling stolen goods, contrary to s.322(1) of the Penal Code (Cap. 63, Laws of Kenya).

The particulars were that the appellant, on 3<sup>rd</sup> August, 2004 at Nakuru, in Rift Valley Province, otherwise than in the course of stealing, dishonestly retained a motor vehicle registration No. KAD 474V (under fake registration No. KAK 042X), a Toyota Corolla Saloon valued at Kshs.300,000/= which was unlawfully obtained.

The prosecution case, presented through the testimonies of five witnesses, was that the motor vehicle which was the subject of the charge, was the property of *John Wambugu Maina* (PW2); PW2 had purchased this motor vehicle in March 1993, and PW2 held a valid registration book, No. 507412, to prove his ownership. PW2 had entrusted the said motor vehicle to his driver, *Jackson Muchiri Waburi* (PW2) who, on 12<sup>th</sup> July, 2004, at 1.00 pm was driving the same along Muhuri Road, a rough and damaged road dictating slow speed; and in the meantime strangers armed with pistols confronted him, stopped him and entered the motor vehicle. The robbers later threw PW1 out of the motor vehicle and stole the same.

The stolen motor vehicle was recovered in Nakuru Town, on 3<sup>rd</sup> August, 2004. Both Inspector of Police *Thomas Chemweno* (PW3) and Corporal *Joseph Cheruiyot* (PW5) were on patrol in Nakuru Town, when they spotted the said motor vehicle parked at a place known as Shababs, where the appellant herein was the person in possession of the same. PW3 and PW5 suspected this was a stolen motor vehicle, on account of the unusual manner in which the number plates were painted. The numbers shown on the plates were ill-aligned, and gave the impression of a do-it-yourself job. When the two Police officers questioned the appellant herein, he represented to them that the motor vehicle belonged to an Army officer based at Lanet Barracks, but he would not give the particulars of the alleged owner.

The Police officers took the suspect motor vehicle to Nakuru Police Station, where a further check revealed that the chassis and engine-number details showed the proper registration particulars of the same

to be No. KAD 474V, Toyota Corolla. It was then ascertained that the motor vehicle of those particulars had been stolen in the Gigiri area on 12<sup>th</sup> July, 2004, and that the incident had been reported to Gigiri Police Station. On the basis of this information, PW4 visited Nakuru Police Station on 9<sup>th</sup> August, 2004, met PW3 and PW5, and took the subject motor vehicle and the appellant herein, up to Gigiri Police Station.

Although PW1 had said he could identify those who robbed him of the subject motor vehicle, he was not able to identify the appellant herein at an identification parade. The appellant would *not reveal* the person he regarded as the true owner of the subject motor vehicle; he claimed that he used to communicate with the owner from public telephone booths. But PW2, the registered owner of the motor vehicle was able to produce a set of keys for the said motor vehicle – among them the ignition key, which was tested on the motor vehicle and got the engine started. PW4 testified that he had visited the motor vehicle registration office in Nairobi, and confirmed that the owner of motor vehicle Reg. No. KAK 042X, the fake number plates which had been installed on the subject motor vehicle, was Safari Marks Park Motors.

The appellant had produced no document of ownership for the subject motor vehicle to PW4 or PW5. He had claimed he was a taxi driver, and that the subject motor vehicle had been left to him by its owner, one **Mr. Simon Thuo**, of the Kenya Army, based in Nairobi.

The learned trial Magistrate acquitted the appellant of the main charge, of robbery with violence, because the complainant (PW1) was not able to identify the appellant as one of those who robbed him of the car on the material date.

However, the trial Court found the appellant guilty on the alternative count:

**“...the accused was found with the vehicle...that turned out to be the vehicle robbed from the complainant...The accused did not deny that he was found in possession of that vehicle which, however, had different registration numbers.”**

The learned Chief Magistrate defined the issue remaining for consideration as: “*whether the accused has given a reasonable explanation of how he came to be in possession of the [motor] vehicle.*” The appellant herein had declined to take PW4 to the person he (appellant) said was the owner of the motor vehicle.

The trial Court found the case fully proved against the appellant, on the alternative charge; in the learned Chief Magistrate’s words:

**“In the result, the prosecution case on the alternative charge is abundant, cogent, and has sustained the charge against the accused person.”**

The appellant came into the Court with amended grounds of appeal. Although the amending of grounds of appeal at the last moment represents a failure to comply with appeal procedures, apart from being unfair to the prosecution, I took into consideration the fact that the appellant was unrepresented, and, in the circumstances the broad goals of justice dictated that the Court should none-the-less go ahead and weigh *all the evidence and submissions together*, before reaching a decision.

The appellant contended that the trial Court had been guided by eccentric theory, rather than evidence, in arriving at its verdict; he contended too, that the ten-year term of imprisonment imposed was “harsh and excessive”; he urged that the trial Court had erred in law and fact, by not according due weight to his unsworn defence statement.

The appellant canvassed the foregoing points in his written and oral submissions; but his main focus was on the contention that sentence was harsh and excessive; he also contended that he had been employed to run a taxi for someone else.

Learned respondent’s counsel, **Ms. Gateru** contested the appeal, and urged that strong and consistent

evidence had been adduced by the prosecution, in support of the alternative charge, on which a conviction had been recorded. There is no good reason, counsel urged, why the subject motor vehicle was found in the appellant's possession when it bore fake number plates, and this motor vehicle, moreover, was the property of PW2 – a proven fact. This car had been stolen barely one month to the date when the appellant was arrested with it. Counsel submitted that the fact that the said motor vehicle was found in the possession of the appellant; the fact that the motor vehicle had fake number-plates; and the fact that he was evasive about the motor vehicle's ownership, would show that he *did* know the goods to be stolen goods – and so he was properly convicted on the alternative count.

Was the ten-year term of imprisonment harsh and excessive? Counsel urged that, as the law provided for a maximum of 14 years' imprisonment, ten years was a perfectly reasonable term, which was in any case lawful, imposed by the trial Court.

After carefully considering the facts of this case, I have come to the conclusion that the trial Court judicially and correctly arrived at a finding of guilt, on the charge of *handling stolen property*. Indeed, only for lack of sufficient evidence did the appellant earn an acquittal on the first count of robbery with violence; for he was found in possession of a motor vehicle only so recently stolen, and stolen in a robbery-with-violence attack. The appellant most certainly was *in possession* of the said motor vehicle, an item with all the symbols denoting theft, but signally failed to give *any reasonable explanation* of his possession of the same. It is clear to me that the appellant, at the very least, knew he was possessed of stolen goods. He was, in my judgement, most properly convicted by the trial Court.

As to sentence, there is no basis in law for me to disturb the ten-year jail term imposed by the trial Court. For that is a lawful sentence, and the learned Chief Magistrate properly imposed it by virtue of the discretion vested in him. In imposing the sentence, it is not apparent to me that the trial Court *failed to take into account any pertinent principle, or applied any wrong principle*; nor is it at all apparent that the sentence was *manifestly harsh and excessive*.

I therefore uphold the conviction entered by the trial Court, affirm the sentence, and dismiss the appeal.

***Orders accordingly.***

**DATED** and **DELIVERED** at Nairobi this 5<sup>th</sup> day of May, 2008.

**J.B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court Clerk: Mr. Huka**

**For the Respondent: Ms. Gateru**

**Appellant in person**