



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL APPEAL NO.1385 OF 2000**  
**(From Original Conviction and Sentence in Criminal Case  
No.2679 of 1999 of the Chief Magistrate's Court at Nairobi).**

**ANTONY KAMAU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

The appellant ANTONY KAMAU KINYANJUI was convicted by the Resident Magistrate, Nairobi of the offence of handling suspected stolen property contrary to section 322(2) of the Penal Code Cap 63 Laws of Kenya. He was sentenced to serve 15 months imprisonment. This appeal is against both conviction and sentence.

The prosecution case is that on 4th July, 1990 at about 7.30 p.m. Edward Wachira (PW1) parked his motor vehicle registration No. KQG 454 Datsun 1300 Pick up inside his residence at Ngara area of Nairobi. After a few minutes he heard the motor vehicle being driven off. Efforts to follow the motor vehicle proved futile.

In January 1997 he saw the motor vehicle at a garage – Kirinyaga. It then had the registration numbers KSU 837. He again saw it in May 1999 being driven along Muranga road. He followed it to Grogan road. He saw police officers nearby whom he informed. The officers arrested the vehicle. It was then being driven by Mr. Daniel Muigai. PW1 stated that he found Daniel Muigai is now deceased and that he had produced an agreement for the purchase of the motor vehicle from the appellant. PW1 did not know the appellant before. The motor vehicle was taken to Pangani Police Station.

Simon Njenga (PW2) is a seller of motor vehicles at Amus Motors. He testified that he was the contract between the appellant and the buyer of the said motor vehicle. He stated that the motor vehicle that was being sold by the appellant was Datsun 1600 pick up. On being cross examined by the appellant PW2 was categorical that the motor vehicle the appellant sold was not the one that was produced as an exhibit in court. Charles Nderitu (PW3) whom the buyer had also asked to look for a vehicle wished to buy informed the trial court that he could not remember whether the motor vehicle that was sold by the appellant was Datsun 1300 model or 1500 model. In re examination by the prosecution PW3 answered that he thought the motor vehicle that was being sold was model 1500. In a question PW1 to him by the court PW3 answered that the vehicle that was produced in court was model 1500. He also produced with that before the agreement for sale was signed the purchase obtained a licence from the Registration of Motor Vehicles and confirmed that the chassis and engine numbers of the vehicle being sold matched with the entries in the Log Book.

Police Corporal Mwalimu (PW4) from the scene of crimes lifted the chassis and engine numbers of the motor vehicle provided with and found the original chassis number to be 286263 and the engine

Number J902385. In his defence the appellant confessed that the vehicle produced in court was not the vehicle he sold. He alleged that he had purchased the vehicle he sold from one Samuel Murage.

In her judgment the learned trial magistrate appreciated there was no doubt among some of the prosecution witnesses regarding the model of the motor vehicle the appellant is alleged to have sold. He pointed out that the prosecution ought to have called someone from the Registration of Motor Vehicles to peruse the relevant files in respect of the motor vehicles Registration Numbers KQG 454 and KSV 837 to confirm which were the initial vehicles that had been registered as KQG 454 and KSV 837.

In my view the learned Magistrate then fell into error when she concluded that the motor vehicle the appellant sold was the one produced as an exhibit. There is all the possibility that no one else, nor the appellant, could have tampered with or even had the body of the vehicle changed after the appellant parted with its possession. The characteristics on the model sold by the appellant are so crucial that they cannot be treated casually the way the learned Magistrate did in her judgment.

I wish to point out that the prosecution also failed to trace, for purposes of testifying in court, the person who sold the motor vehicle to the appellant and alternatively the person who appeared in the registered number of KSV 837 in the records held at the registry of motor vehicles. The conviction of the appellant was not safe.

I allow the appeal, quash the conviction and set aside the sentence. The appellant will be set at liberty.

**Dated and delivered at Nairobi this 5th day of July, 2001.**

**J.K. MITEY**

**JUDGE**

**5/7/2001**

**Mitey, J**

Appellant present

No appearance for State

Ndungu – court clerk

**Court:**

Is delivered.

**J.K. MIETY**

**JUDGE**