



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO.78B OF 2015

PETER KAGOTHO.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGEMENT

The appellant was charged with 9 counts and was found guilty on the 1st and 9th count. He was acquitted on the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th counts.

In count no.1 he was sentenced to Five years imprisonment.

In respect to count No.9 he was sentenced to three years imprisonment. Sentences were ordered to run concurrently.

The Particulars on the 1st count were that on the 30th day of May 2012 at New solutions estate within Buruburu Division Nairobi county, jointly with others not before the court stole Motor vehicle registration number KBG 504 V Toyota station Wagon beige in color valued at Ksh 875,000/= the property of Samwel Clyod Odhiambo.

In the 9th count the Particulars are that on the 2nd day of September 2011 within the Republic of Kenya, jointly with others not before the court with intend to defraud and without lawful authority or excuse obtained a certain document namely Motor vehicle registration book no 20112450940 for motor vehicle Registration number KBB 981 R Toyota Station Wagon in the names of **Stephen Kiprop Bii**.

In support of their case the prosecution called nine witnesses. The defence called two.

Being dissatisfied with the Judgment of the learned trial Magistrate the appellant has filed this appeal whose grounds in the main are that the conviction was against the weight of evidence adduced in court.

It is also contended that the Accused was denied a fair trial in that the learned trial Magistrate in arriving at the decision, he was actuated by Malice, bad faith, intimidation and arrogance against the appellant.

Further that he did not put into consideration the defence by the accused.

This appeal is opposed, it is a first appeal. It is incumbent upon this court to evaluate and reconsider the evidence on record so as to arrive at its own conclusion but also bearing in mind that unlike the trial court. I did not have the opportunity to observe the demeanor of the witnesses.

Ref:-Okermo –vs-R 1972 EALR

The Prosecution case. Anthony Kishoyian Twala (pw1) on the 23rd day of May 2008 purchased a Motor vehicle registration no.KBB 981r Make Toyota Corolla Fielder white in colour From One George Gazember Juze for an agreed price of KSH 850,000/=.

On 3rd January 2010 his car was involved in an accident after it was swept off the road by floods waters. The wreckage was recovered the following day. He contacted his insurance and he was duly compensated and he handed over the logbook to the insurance and the car keys plus the wreckage to the insurance. He later recovered the front bumper of his vehicle bearing the registration number KBB 981 R which he kept and later produced in court (exhibit NO.1)

He was later confronted by police who were investigating the theft of a Motor vehicle registration no.KBB 981 R and he informed them of what had transpired.

PW2 (Samwel Clyod Odhiambo) testified to have exchanged his car registration number KBG 504 V make Toyota corolla Fielder with his cousin on 28th May 2010. He took his cousin car a KBJ something make Toyota premio. On 30th May 2010 his cousin called him and informed him that the car was stolen at a parking at Donholm Nairobi. He later reported the matter to police and his insurance. He was later compensated by his insurance to the sum of Ksh 614,000/= Later in the Month of May 2012 he received an information from the police that a car bearing Registration no.KBG Fielder had been recovered at Bomet. He proceeded there and saw a motor vehicle bearing the registration KBG mark on the lights. It bore registration no.KBB 981 R.

Betty Chepngeno Langat (PW6) testified to have bought a motor vehicle registration no.KBB 981 R a Toyota Filder at Wagon park on 25th June 2010. The same was sold to her by Peter Kagotho and a sale agreement was signed before an Advocate at an agreed price of ksh 500,000/= .The first sale agreement indicated registration number KBB 891 R but after realizing the mistake they signed another agreement dated 30TH 11/2011 showing the correct Registration number KBB 981 R Chassis no.ZZE/22001-6083,ENGINE NO.IMZ - AI48397.

The logbook was in the name of Stephen Kipkorir Bii her brother.

Later on 14th/6/2012 she was called and informed by one of her brother Robert Bii that Police had impounded the vehicle. when she went to Bomet police station she was informed that Chassis of her motor vehicle had been interfered and tampered with. The seat belt and engine numbers, she handed over to police the said sale agreement and the note acknowledging receipt of money by the seller, Peter Kagotho. She also handed over the vehicle to police for further investigations.

She started looking for Peter Kagotho but she was not able to trace him by phone.

When she conducted a search at the Registry on motor vehicle registration KBB 981R, the owner was shown as Tualla Antony and Magadi Soda Company.

In his sworn statement the appellant testified to have possessed motor vehicle registration number KBB 981R which he bought from one Benson Karanja Muiruri

He denied having stolen Motor vehicle registration no.KBG 504 V. He produced a sale agreement between himself and the said Benson Karanja Muiruri.

I have perused the Judgment delivered by the learned trial Magistrate. Its appreciated that he did observe like this court does, that the evidence against the Accused was circumstantial in nature as no witness saw the Accused steal the Motor Vehicle in question which is KBG 504V. The learned trial Magistrate did proceed to set down laid principles in cases related to circumstantial evidence and went on to rely in the case of

Omar Nazungu Chimera-vs R CR No 56 of 1998

He further at page 77 last paragraph proceeded to find that the prosecution had established that the vehicle that was impounded at Kericho by police on 14/5/2012 was sold to pw6 (Betty Langat) by the Accused person which facts were not contested by the accused.

(2) The said Motor vehicle bore registration Numbers KBG 504 V on its front and rear lights. This fact was not denied by the Accused.

(3) Evidence by the prosecution witness showed that the engine number and the chassis of the motor vehicle, the Accused had sold to Betty (PW6) had been tampered with.

(4) That it had transpired in evidence that there were two motor vehicles which bore the same registration number KBB 981R.

The first one being the one registered under the names of Anthony Twala and Magadi Soda Company.

Which vehicle had been swept off during floods and was declared a write off.

The second vehicle was the one sold to Betty (PW6) By the Accused on 25/6/2010.

The learned trial Magistrate did observe and correctly so that the Accused did claim to have bought the motor vehicle registration no.KBB 981R from one Benson Karanja on 20/2/2010.

Though he did produce a sale agreement. He was not able to produce transfer documents signed by both parties and nor did he present any registration documents to that effect.

During the sale transaction between the Accused and Betty Langat PW6 there were no transfer documents signed between the two and the Accused proceeded to obtain a registration book in the name of Stephen Kiprop Bii.

It was also noted that the logbook produced in court one in the name of Anthony Kishoyan Twalla (pw1) and that in the name of Kiprop Stephen Bii (pw2) both bore the same chassis numbers i.e. ZZE122-8016083. The question was how there could be in existence two vehicles bearing the same registration numbers and the same chassis numbers.

There was evidence vide a letter from the Registrar of motor vehicles dated 16/9/2010 confirming that the logbook bearing engine no.INZ-

A148397 which was in the name of Kiprof Stephen Bii which is the vehicle that was sold by the accused to Betty (PW6) was fake.

Having evaluated the evidence on record and the findings of the learned trial Magistrate I am satisfied that both the conviction and sentence were safe and lawful. The circumstantial evidence against the accused did irresistibly point to the guilty of the Accused.

I am satisfied that counts no 1 and 9 were proved beyond reasonable doubt. This appeal has no merit and it's disallowed.

It is noted that the appellant was released on a bond pending appeal. This bond is hereby cancelled. He will proceed to serve the imprisonment term meted out to him by the lower court. Same to resume from the time he was released on bond.

Judgment delivered dated and signed this 4/4/2017 in open court in the presence of learned counsel M/S Kiptoo, learned counsel M/S Kirui for the Appellant

C/A Rotich

M.MUYA

JUDGE

4/4/2017