



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 192 OF 2013
PRINCE MWANZIA CHAMBATI.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

(From original Conviction and Sentence in Criminal Case No. 924 “B” of 2012

of the Principal Magistrate's Court at Kwale – Hon. Usui Macharia- SPM)

JUDGMENT

The Appellant was Sentenced to six (6) years imprisonment for the offence of handling stolen property contrary to section 322 of the Penal Code.

The Accused person had been charged with the offence of stealing of a motor vehicle contrary to section 278 A of the Penal Code.

The particulars being that:-

“On the night of 16th and 17th day of June, 2012 at Bombolulu Kisauni – Mombasa County jointly, with others not before the Court, stole a motor vehicle Mitsubishi Canter pick -up Registration No. KBR 240P valued at Ksh. 3,550,000/= the property of MILTUL LILADHAR DUPHIYA”.

The learned trial magistrate after hearing and deliberating on the evidence adduced before her found the Accused guilty of the offence of handling stolen goods contrary to section 322 of the Penal Code.

Being aggrieved by that decision the appellant filed this appeal.

The grounds are that:-

- 1. The motor vehicle in question was not recovered from the Appellant.**
- 2. There was non -compliance with the provisions of section 63(3) of the evidence Act.**
- 3. The Conviction was against the weight of the evidence adduced in Court.**
- 4. That the learned trial magistrate did not consider the evidence by the defence.**

This appeal is conceded by the state on the grounds that the learned trial magistrate relied on the evidence of PW 4 who was the investigating officer who gave hearsay evidence and mentioned one Kioko who was not called to testify. That this Kioko should have been treated as a suspect or as prosecution's main witness.

A perusal of the evidence on record clearly indicates that none of the prosecution witnesses mentioned the Accused in connection with the theft and handling of the motor vehicle in question.

It is only PW 4 who is the investigating officer who mentions the appellant and this is from what he was told by one Kioko who was not called to testify in this case. This is what PW 4 told the Court (at page 18 line 13),

“On 30th July, 2012 while on patrol Kilimbasi region we got a tip of from members of public that a vehicle that was suspected to be stolen had been vandalized and its parts were being sold. We went to the homestead of a man called Joshua Kioko and found vehicle parts. We looked for him and found him. On interrogation he told us some people took it to his place including his sister. On investigations we arrested Accused person. The recovered parts are from the photos before the Court. Kioko gave a list of phone numbers left behind by the owners. There were 4 numbers. It was left with him for sale.....”We called one number 0725021789 and 0755613743 belonged to Accused”.

That's all there is as against the appellant.

There is no evidence to the effect that the Accused was found in possession of the stolen motor vehicle. There is no evidence to the effect that he was seen stealing the vehicle in question.

The only evidence against him is that of PW 4 the investigating officer. This evidence is what he was told by one Joshua Kioko in whose compound the motor vehicle parts were recovered. As argued by Counsel for the state Mr. Wamotsa, this Mr. Kioko should have been the main suspect or in the alternative the main prosecution witness.

But this man Kioko was not called to testify in Court so as to explain the role (if any) the Accused played in handling the stolen motor cycle. I do find that the conviction was against the weight of evidence adduced. The learned trial magistrate relied on hearsay evidence. The conviction was unsafe. The appeal has merit.

I accordingly quash the conviction and set aside the sentence.

The Appellant is set at liberty forthwith unless otherwise lawfully held.

Judgment delivered dated and signed this **6th** day of **February, 2015**.

.....

M. MUYA

JUDGE

6TH FEBRUARY, 2015

In open Court in the presence of:-

Mr. Ombuya for the appellant

Mr. Jami for the State.