

REPUBLIC OF KENYA

Kabora v Republic

High Court, at Mombasa

September 1, 1992,

Omolo J

Omolo J delivered the following Judgment.

Like the magistrate, I am satisfied that there was abundant evidence to prove that the appellant, Charles Kimathi Kabora, broke into vehicle Reg. KAA 657M belonging to Mbaruku Hamisi and stole from that vehicle 1 engine timing cover whose value was put at some Shs.20,000/-. The vehicle of Mbaruku (PW.1) broke down in the course of business and he had it towed to a shed or garage belong Mohamed Kea (PW.2) PW.2 was working together with Athmani Ali (PW.3), and the two of them stated that after the vehicle was brought to their garage they locked it up and on the 1st December, 1991 at night, the timing cover was stolen from the vehicle. That item was apparently removed from the engine and to do so the person who stole it must have opened the vehicle.

The evidence of PW.2 and PW.3 was that on the 3rd December, 1991 they met this appellant and he was in possession of the item which had been stolen from the vehicle. When they asked him about the stolen item, the appellant reacted by dropping it down and running away. He was chased and caught and taken to the police station where Constable Nathan Ambogo (PW.4) received him together with the stolen item. When put to his defence the appellant merely alleged that he had quarreled with some person, that that person hit him with a metal object and the crowd which gathered then alleged he had stolen the metal object with which he had been hit. The learned Snr. Resident Magistrate who saw and heard witnesses give evidence before him believed the witnesses for the Republic and disbelieved the short unsworn statement of the appellant. The magistrate was entitled to do so, and in the evidence before me, I do not see that there was any other reasonable conclusion to be drawn. The conviction of the appellant was sound, and I dismiss the appeal against the conviction. The appellant was a first offender and the item stolen from the vehicle was recovered. Though the offence of stealing from a locked motor vehicle is common and serious, the sentence of 3 years imprisonment imposed on the appellant was too severe in the circumstances. I reduce the prison term to one of 18 months to run from the date when the appellant was convicted and sentenced by the magistrate. To that extent, the appeal against sentence succeeds.