



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL APPEAL 782 OF 1983

Manyala.....Appellant

v

Republic.....Respondent

Criminal law - theft of motor vehicle - identification by sole witness and evidence by purchaser - whether appellant was clearly connected to the crime.

The appellant was convicted for the offence of theft of a motor vehicle contrary to section 278 (a) of the Penal Code. He was identified by a witness named Marindi as being one of the people who drove away the lorry. The purchaser of the stolen lorry one Lihanda alias Cisco also testified and identified the appellant as the vendor of the stolen lorry. The appellant was thus sentenced to 5 years imprisonment plus 9 strokes corporal punishment. He appealed against conviction and sentence.

Held:

1. The evidence against the appellant was overwhelming as he was identified by the purchaser and an eyewitness to the theft.
2. The sentence may at first seem severe but considering the circumstances of the theft it was well merited and the learned magistrate duly considered the all the surrounding circumstances before arriving at the sentence.

Appeals dismissed.

Cases

No cases referred to.

Statutes

Penal Code cap 63 section 278(a)

Advocates

L Mbarire for Respondent

May 24, 1984, O’Kubasu J delivered the following Judgment.

The appellant was convicted of theft of motor vehicle contrary to section 278A of the Penal Code (cap 63) and was sentenced to 5 years' imprisonment plus 9 strokes of the cane.

The appellant was clearly identified by George Marindi (PW 16) as one of those who drove away the vehicle (a lorry) from the petrol station in Nairobi. PW 16 saw the appellant at about 6.00 am. Then there was the evidence of Francis Lihanda alias Cisco (PW 19) who bought this lorry from the appellant in Western Kenya (Kisumu and Kakamega). The appellant and his companions were suspected right from the beginning.

The appellant was finally arrested.

Considering the evidence on record there can be no doubt that the appellant was properly convicted of stealing the vehicle in question. Evidence against him was overwhelming. I see no merit in the appeal against the conviction.

As regards the sentence of five years' imprisonment together with nine strokes of the cane this might appear to be severe but it is a sentence which is well merited in the circumstances of this case. The learned trial magistrate considered all the surrounding circumstances before arriving at that sentence. I see no justification in interfering with the learned trial's discretion in awarding that sentence.

In view of the above, I order that this appeal be and is hereby dismissed in its entirety. Order accordingly.