

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CRIMINAL APPEAL NO. 898 OF 1982

JUMAAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted by the district magistrate of the 2nd class at Makadara for conveying suspected stolen property contrary to section 323 of the Penal Code. He was jointly charged with another accused who absconded for that on May 15, 1982 at Central Police Station Nairobi within the Nairobi area jointly having been detained by No 33755 PC Wangombe as a result of the powers conferred to him under section 26 of the Criminal Procedure Code were found conveying a motor vehicle windscreen suspected to have been stolen or unlawfully obtained. Upon conviction the accused was sentenced to ten months' imprisonment. The facts as found by the learned district magistrate show clearly that PW 1 arrested this accused together with his co-accused and took him with the windscreen in question to the police station. It was at the police station where PC Joseph Wangombe was on duty that that officer arrested the appellant and at that time it was PW 1 and the people with him who were carrying the windscreen.

For section 323 of the Penal Code to apply the appellant must have been arrested under the powers conferred on a police officer under section 26 of Criminal Procedure Code which authorizes any police officer to stop, search and detain ... (c) any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained.

It is quite clear in this case that the police officer did not stop, search and detain the appellant. That was done by PW 1 and there is no evidence that he is a person authorized under section 26 of the Criminal Procedure Code. In those circumstances this conviction cannot be supported and this appeal must be allowed. The conviction will be quashed and sentence set aside.

Dated and Delivered at Nairobi this 25th Day of February, 1983

D.C. PORTER

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Ag JUDGE