



**Republic of Kenya**

**High Court, at Nairobi**

**Porter Ag J**

**Criminal Appeal No 898 of 1982**

**Juma v Republic**

Criminal law - conveying suspected stolen property - contrary to section 323 of the Penal Code (cap 63)- appellant not arrested by person authorised under section 26 of the Criminal Procedure Code (cap 75)- whether section 323 of the Penal Code applicable - stopping, searching and detaining a person under section 26 of the Criminal Procedure Code - person authorised to do so - nexus of the provision with section 323 of the Penal Code.

The appellant was convicted and sentenced on a charge of conveying stolen property contrary to section 323 of the Penal Code (cap 63). He had been arrested while conveying a car windscreen suspected to have been stolen. The arrest was done by a person who was a witness for the prosecution and who had taken the appellant to a police station where a police constable was on duty. The substance of the charge was that the appellant, having been stopped and detained by the police constable under section 26 of the Criminal Procedure Code (cap 75), was found to have been conveying property suspected of having been stolen. The appellant appealed.

Held:

1. For a person to be charged and convicted with conveying stolen property under section 323 of the Penal Code, that person must have been arrested under the powers conferred on a police officer under section 26 of the Criminal Procedure Code which authorises any police officer to stop, search and detain any person suspected of conveying stolen property.
2. The appellant had been stopped, searched and detained not by the police but by the prosecution witness, who was not a person authorised to do so under section 26 of the Criminal Procedure Code.
3. In those circumstances, the conviction of the appellant could not be supported.

Appeal allowed.

Cases

No cases referred to.

Statutes

1. Penal Code (cap 63) section 323
2. Criminal Procedure Code (cap 75) section 26

Advocates

F Nabutete for Respondent

February 25, 1983, Porter Ag J delivered the following 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.

**February 25, 1983**