



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CRIMINAL APPEALS NOS 727 & 728 OF 1983

THAHABU IBRAHIM

MOHAMED ALI IBRAHIM.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

The two appeals are consolidated. The appellant Mohamed Ali Ibrahim was the fifth accused in the lower court while appellant Thahabu Ibrahim was the sixth accused. They were jointly charged with others but the two appellants, who happen to be husband and wife, were convicted on an alternative charge of handling stolen goods and each of them sentenced to seven years' imprisonment with hard labour and police supervision for five years on expiry of prison sentence. The main charge was that of housebreaking and stealing contrary to sections 304(1)(a) and 279(b) of the Penal Code (cap 63). Six people were charged with that count with an alternative charge preferred against the two appellants. While the two appellants were acquitted on the main count they were convicted on the alternative charge. The evidence against the two appellants was that of possession of some of the property which had been stolen from the complainant's house. The evidence on record would show that it was the second accused (in the lower court) who took the stolen property in the house of the two appellants. The fifth accused was not present and he did not even come into contact with the stolen property. Even the learned state counsel (Mr Gatonye) found himself in considerable difficulties in trying to support the conviction of the fifth accused.

As regards the sixth accused, there was evidence that the stolen property was brought to her house. Her husband was not present. She did not deal with the stolen property since the second accused merely wanted to keep the property in that house. The issue here is whether the sixth accused knew that the goods had been stolen or had reason to believe that they were stolen goods.

In *Mumbi v R* [1970] EA 345 at p 346 Mwendwa CJ and Trevelyan J held:

“... and it seems to us that in regard to the offence of receiving the knowledge or the reason to believe the goods to have been stolen must be related to the time of their receipt by the accused...”

Is there evidence in this case to show that when the second accused brought the goods to the house of both appellants the sixth accused (Thahabu Ibrahim) knew that the goods had been stolen? Then in *Ratila and Another v R* [1971] EA 575 the Court of Appeal held that on a charge of handling stolen goods the prosecution must prove.

- a) that the handling was otherwise than in the course of stealing;
- b) that the accused received the goods knowing or having reasons to believe that the goods were stolen; or
- c) that the accused dishonestly undertook or assisted in the retention, removal or disposal or realization of the goods by or for the benefit of another person.

In the present appeal it cannot be said that the above stated requirements were met. There was indeed suspicion, very strong suspicion, that these two appellants might have known something about the origin of these goods found in their house but that remains only a suspicion. The law requires that the charge against an accused person must be proved beyond any reasonable doubt. If there is any doubt then the same is resolved in favour of the accused person.

Having considered all the evidence before the lower court I have a doubt in my mind as regards the guilt of these two appellants on this serious charge of handling stolen goods. I therefore allow these appeals, quash the convictions and set aside the sentence passed together with the reporting order.

Orders accordingly.

Dated and Delivered at Nairobi 12th Day of October, 1983

E.O. O’KUBASU

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JUDGE