

**KASEKE v THE PEOPLE (1974) ZR 51 (SC)**

SUPREME COURT

DOYLE CJ, BARON DCJ AND HUGHES JS

12th MARCH 1974

(Appeal No. 118 of 1973) 40

**Flynote**

**Criminal Law - Possession of goods reasonably suspected of having been stolen or unlawfully obtained - Explanation by accused - Extent of onus - Penal Code, s. 319.**

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**Headnote**

The appellant was convicted of being in possession of a motor vehicle reasonably suspected of having been stolen. When asked by the police to explain his possession he said he had bought it at an auction; in court, in an unsworn statement, he gave a different explanation. 5 Neither explanation explained the fact that the engine had been changed and its number tampered with.

*Held:*

- (i) Under s. 319 of the Penal Code the *onus* is upon the accused to furnish an explanation which satisfies the court.
- (ii) The 10 *onus* is discharged if the explanation is one which, though it might not necessarily be true, might reasonably be true.

Legislation referred to:

Penal Code, Cap. 146, s. 319.

*G M Sheikh, Senior Legal Aid Counsel, for the appellant.*

*D K Chirwa, Senior State Advocate, for the respondent.* 15

**Judgment**

**Doyle CJ:** delivered the judgment of the court. The appellant was convicted of the offence of being in possession of a motor vehicle reasonably suspected of having been stolen. The facts are that the appellant was found in possession of this vehicle which had been sold at an auction 20 by the PWD to a man named Patel. Patel had stripped it of its engine, differential and gear box, and sold the shell to a man named Mapulanga. When the police found the appellant in possession of the vehicle they found that there was no key, and that there was an appearance of an attempt to alter the numbers on the chassis. When they 25 looked up the history of the vehicle they found it as I have just stated. When the appellant was asked for an explanation he said, "I bought it at an auction." In the face of this evidence it seems to us that it was reasonable for the police and the trial court reasonably to suspect that the vehicle had been stolen or unlawfully obtained.

It 30 fell therefore to the appellant under the section, and the *onus* lies upon him to furnish an explanation which satisfied the court, and that explanation in our opinion is an explanation which, though it might not necessarily be true, might reasonably be true. The question in this case is: did the appellant furnish any such explanation. When asked 35 originally, as I say, for an explanation he said he had bought it at an auction. When he came to the magistrate's court he changed that story, and he did not give evidence upon oath. He merely made a statement that Ngwee Motors, which was owned by Mr Patel, bought the car he wanted to buy. He went to Ngwee Motors and he asked Mr Mapulanga 40 to buy the car from Ngwee Motors. That was the first time he mentioned Mr Mapulanga. We do not consider that, where a person is asked in relation to a motor car which has not the engine with which it was bought but a differential engine, the appellant's explanation was a reasonable one. In the first place he himself had never bought that vehicle at auction,

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and secondly, even if it had been bought at auction by somebody else it had never been bought by him in the condition it was when the police found it. So one would expect the answer to be made - "Oh! that vehicle - the chassis came to me in such and such a way, and the engine came to me in another way." Instead of this he makes this bare statement, and later <sup>5</sup>he changes it. Now there is an *onus* upon the appellant to give an explanation which might reasonably be true. If he does not give evidence on oath it means that his explanation is so much the weaker, and has the less chance of satisfying the court. In this case he did not give evidence upon oath; he gave an explanation which the trial court did not consider <sup>10</sup>to be reasonable, or which could be reasonable, and there is no basis for us to interfere with this finding. Accordingly the appeal is dismissed. The sentence is a perfectly proper sentence.

*Appeal dismissed*

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