

LAZAROUS KANTUKOMWE v THE PEOPLE (1981) Z.R. 125 (S.C.)

SUPREME COURT

GARDNER, AG. D.C.J., MUWO AND BWEUPE, AG. J.J.S.
9TH JUNE, 1981
(S.C.Z. JUDGMENT NO. 11 OF 1981)

Flynote

Criminal law and procedure - Possession - Being in possession of recently stolen property -
Inference to be drawn by court.

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Headnote

The appellant was convicted of theft of a motor vehicle and sentenced to six years imprisonment with hard labour. The vehicle was stolen on the 12th of August, 1978, and the appellant was found in possession of it on the 7th September, 1978. The trial Magistrate accepted the evidence of P.W.2 who actually saw the accused sitting in the driver's seat of the stolen vehicle. On appeal against conviction for theft:

Held:

- (i) When a person is found in possession of recently stolen property, it is the duty of the trial court to consider whether the only reasonable inference is that, that person stole the item in question. It is the duty of the court to consider whether there was another explanation for the appellant being in possession of the stolen property.
- (ii) In this particular case it is quite possible that the appellant did not steal the motor vehicle, but it is quite clear that he was in possession of stolen property and should properly be convicted of receiving stolen property knowing it to have been stolen.

Cases referred to:

- (1) Chileshe v The People (1977) Z.R. 176.
- (2) Kape v The People (1977) Z.R. 192.

For the appellant: In person.
For the respondent: F. Mwiinga, Senior State Advocate.

Judgment

GARDNER, AG.D.C.J.: delivered the judgment of the court. The appellant was convicted of theft of motor vehicle and sentenced to six years imprisonment with hard labour.

The prosecution evidence was to the effect that a vehicle was stolen from the complainant, and the complainant's friend, at the Lusaka City Council offices, saw the stolen vehicle with the appellant

sitting in the driver's seat. Whilst the friend, who was a prosecution witness, was watching the vehicle he saw the appellant come out of the vehicle and attempt to stick a piece of paper over the registration licence on the windscreen. This prosecution witness then arranged for the arrest of the appellant.

The appellant has quite properly indicated that the trial magistrate relied on a statement by a co-accused, and also a confession statement made by the appellant himself without first asking the appellant whether he objected to the admission of that statement. These are very valid grounds of appeal and in order for the conviction of the appellant to stand, it would be necessary for this court to apply the proviso to section 15(1) of the Supreme Court Act.

Having regard to the fact that the learned trial magistrate accepted the evidence of PW2 who actually saw the accused sitting in the driver's seat of the stolen vehicle, we are quite satisfied that, despite the misdirection by the magistrate, any reasonable court must have convicted in any event. The matter does not end there however. The vehicle was

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stolen on the 12th of August, 1978. The appellant was found in possession of it on the 7th of September, 1978. The appellant was therefore in possession of a comparatively recent stolen motor vehicle. This court has had occasion to say in two cases, namely, the cases of *Chileshe v The People* (1), and *Cape v The People* (2), that, when a person is found in possession of recently stolen property, it is the duty of the trial court to consider whether the only reasonable inference is that that person stole the item in question. It is the duty of the court to consider whether there was another explanation for the appellant being in possession of the stolen property. In this particular case it is quite possible that the appellant did not steal the motor vehicle, but it is certainly quite clear that he was in possession of stolen property and should properly be convicted of receiving stolen property knowing it to have been stolen. For this reason the appeal against conviction for theft of motor vehicle is allowed. The conviction for that offence is set aside and the sentence is quashed.

We substitute a conviction of receiving stolen property, and we substitute a sentence of four years imprisonment with hard labour with effect from the date of arrest which was 7th of September, 1978.

Sentence substituted
