

IN THE SUBORDINATE COURT OF
THE FIRST CLASS FOR THE LUSAKA
DISTRICT HOLDEN AT LUSAKA
(Criminal Jurisdiction)

IPG/050/2017

THE PEOPLE v LANGSON PHIRI

Before Hon N. C. Simaubi on the 24th day of April 2017

JUDGMENT

For the People : Mr. S. Moonga, PP.

For the Accused: In Person

Legislation referred to

Section 272 of the Penal Code Cap 87

The accused person stands charged with one count of theft contrary to section 272 of the Penal Code Cap 87. The particulars allege that Langson Phiri on 4th February 2017 at Lusaka in the Lusaka district of the Lusaka Province of the Republic of Zambia, did steal one buffalo bicycle valued at K2700.00 the property of Alex Malunga. The accused person pleaded not guilty to the count.

The burden is upon the prosecution to prove the case beyond all reasonable doubt. There is no burden upon the accused person to prove his innocence.

In order to establish the guilt of the accused, the prosecution must satisfy me upon each and every

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ingredient of the offence charged. **Section 272 of the Penal Code** provides:

272 Any person who steals anything capable of being stolen is guilty of the felony termed "theft", and, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, is liable to imprisonment for five years.

From the above the prosecution must show that:

1. The accused fraudulently; and
2. Without claim of right;
3. Took;
4. A bicycle belonging to another person;

I will now review the evidence on record. The prosecution called four witnesses. The accused person elected to remain silent and called no witnesses.

PW1, Alex Malunga testified that at around 0800 hrs on 4th February 2017, he sent Godfrey Mambwe alias Kasunga to go and order bread for his shop. He also released his bicycle to Mambwe to enable him fulfil the errand. Malunga told the Court that as Mambwe had not returned by 0830 hrs, he decided to follow him to the bakery. However, at the bakery, the staff told him that they had not seen Mambwe. He then returned to his shop and waited until between 1700 and 1800 hrs when Mambwe came and told him that the bicycle had been stolen. He testified that Mambwe explained that he took long to tell him because he went looking for the thief. Mambwe further explained to Malunga that he left the bicycle outside the bakery but that he found it missing when he wanted to load the bread. Mambwe then returned the money for the bread.

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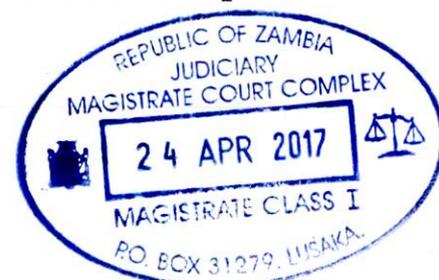


Malunga testified that the next day, he reported the matter at Kalingalinga Police Post where he also valued the bicycle at K2700.00. He described the bicycle as being black in colour and that it was a buffalo model.

Malunga testified that Mambwe was detained in police custody but released a day later. He later learnt that a suspect had been apprehended. He went to the police station where he was shown a person whom he identified in Court as the accused. He stated that he did not know the accused previously and that he does not owe him anything nor did he allow him to take his bicycle. The bicycle was never recovered.

The accused had no questions for cross-examination.

PW2, Godfrey Mambwe alias Kasunga, testified that at 0800 hrs on 4th February 2017, Malunga sent him to go and order bread. He explained that Malunga also gave him his black buffalo bicycle to use for the errand. Mambwe testified that on his way, he met Langson who asked to have a ride on the bicycle. He allowed Langson to ride but that he went away for good with the bicycle. It was his testimony that he waited until around 1200 hrs before reporting the matter at Kalingalinga Police Post. Police advised him to wait till the following day. He then went home and told his parents. At 1700 hrs, he took back the money for the bread to Malunga and explained what transpired. The following day, he and Malunga went to the police station and Mambwe was detained for a day. He testified that when he was released, he continued looking for Langston until he found him at Chipata Police where he was being detained for another offence. Mambwe told the Court that Langston told him that he sold the bicycle



to charcoal burners in Garden Compound. He identified the accused in Court as Langston.

The accused had no questions for cross-examination.

PW3, Det Con Sam Zuba of Kalingalinga Police Post testified that he reported for duties on 5th February 2017 and was allocated a docket of theft to investigate. He told the Court that Alex Mambwe reported that his bicycle worth K2700.00 was stolen on 4th February 2017 by an unknown person. He then interviewed Malunga and Mambwe and learnt that Mambwe gave the bicycle to one Langston to ride for a short distance but that he went away for good with the bicycle. Con Zuba testified that further investigations revealed that Langston was detained in police cells at Chipata Police Post. He then went there and had the suspect transferred to Kalingalinga Police. He then interviewed him and being dissatisfied with his response, arrested and charged him for the offence of theft. Con Zuba stated that the bicycle was never recovered because the suspect told him that he sold it to an unknown person at Garden Compound.

The accused had no questions for cross-examination.

The prosecution closed its case and the accused was found with a case to answer and placed on his defence. He elected to remain silent and to call no witnesses. He is perfectly entitled to do so as there is no onus on an accused to speak in his defence or to call witnesses. It follows that I have to decide this case on the evidence adduced by the prosecution. However, this does not absolve me from testing that evidence to satisfy myself as to its truth or falsity nor does it affect the onus on the prosecution to satisfy me beyond



all reasonable doubt as to the guilt of the accused person.

The accused did not cross-examine any of the prosecution witnesses. As such, he has raised no defence both in direct and indirect evidence. I am thus left with only the evidence of the prosecution to consider.

It is not in dispute that on 4th February 2017, Malunga sent Mambwe on an errand with his bicycle. It is not in dispute that Mambwe met the accused on the way who asked to have a ride on the bicycle. I am satisfied that Mambwe allowed the accused to do so and that the accused went away with the bicycle. Con Zuba testified that when he interviewed the accused, he told him that he sold the bicycle to an unknown person in Garden Compound. There was no other explanation tendered for the missing bicycle apart from what the prosecution led.

Consequently, I find that it is the accused person that took the bicycle from Mambwe and sold it to an unknown person. The taking of the bicycle was fraudulent in that the accused had no intention of returning it. The accused had no claim of right against Malunga, being the owner of the bicycle, or Mambwe who had possession at the time.

VERDICT

In these circumstances, find that the case has been proved beyond all reasonable doubt. Langson Phiri is guilty of the offence of theft contrary to section 272 of the Penal Code Cap 87 and I convict him accordingly.

DELIVERED IN OPEN COURT THIS 24TH DAY OF APRIL 2017



 N. C. SIMAUBI



MAGISTRATE CLASS 1

