



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

CRIMINAL APPEAL 638 OF 83

GRACE NYAMBURA MWANGI..... APPELLANT

(Original Accused No 2)

Versus

REPUBLICRESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO 702 OF 1983

(From original convictions(s) and sentence(s) and sentence(s) in Criminal case No. 353 of 1982 of the Resident Magistrate's court at Thika: H R Aggarwal, Esq.)

John Kihara.....APPELLANT

(Original Accused No 1)

Versus

REPUBLICRESPONDENT

CORAM: TODD, J

O'KUBASU, J

Appellants absent, unrepresented and not wishing to be present,

M B Mbai (State Counsel) for Respondent.

JUDGMENT

The two appeals have been consolidated. Both appellants were convicted of handling stolen property contrary to Section 322(2) of the Penal Code. Each was sentenced to seven years' imprisonment with hard labour. Each appellant was also ordered to be under police supervision for five years upon release

from prison.

John Kihara the appellant in criminal Appeal No 702 of 1983 was the first accused in the lower court while Grace Nyambura Mwangi the appellant in Criminal Appeal No 638 of 1983 was the 2nd accused. In these consolidated appeals we shall refer to the appellants as first and second accused.

The evidence for the prosecution was that on February 22, 1982 Mr Carshen Yhr (PW 1) the head of Engineering at the Western College of Arts and Technology in Kakamega travelled together with his wife Imelda (PW 2) to visit friend at Muranga. PW 1 was driving his car Peugeot 504 saloon registration number KVY 253. At Muranga (PW 1) went to bed at about 11.00 pm after locking his belongings in the car. When PW 1 woke up the following morning he found his car broken into and all the property stolen. He made a report to the police and investigations commenced.

On July 11, 1982 at about 4.30 pm police constable Joseph Ngatia (PW 3) acting on a tip off arrested the second accused in a matatu vehicle travelling from Muranga to Nairobi.

The second accused was wearing a dress which was suspected stolen property. She was escorted to Nairobi where she led the police team to her house in Nairobi. In that house many items were recovered and these included a cheque book issued by Standard Bank Kakamega Branch in the name of Carsten Yhr (PW 1). The cheque book was produced as Exhibit 4. There was also "A" Level result slip (exhibit 5) in the name of Imelda (PW 2).

There was also a "Collins Dictionary" (exhibit 1) bearing the name of (PW 1). The police were informed that first accused who lived with second accused as husband and wife had been arrested and taken to Central Police Station. First accused was then collected from Central Police Station and taken back to his house where he opened a box from which many things connected with other cases were recovered. The police then called (PW 2) who identified exhibits 1, 2, 4 and 5 as some of the property stolen when their car was broken into when they visited their Danish friend in Muranga.

In his unsworn statement the first accused told the lower court that he knew nothing about the exhibit produced in court. He said that those things were not recovered from his house. He requested the court to call for OB (Occurrence Book) from Central Police Station Nairobi and from Muranga Police Station to ascertain when he was arrested.

The second accused in his unsworn statement said that policemen had told lies in court he knew nothing about the exhibits produced in court.

The facts before the lower court showed that the complainant's vehicle was broken into during the night of February 22 and 23, 1982. About five months later both appellants who lived as husband and wife were arrested in possession of some of the property stolen when the complainant's (PW 1's) car was broken into. Both appellants denied possession but in our view their denial could not be accepted in view of overwhelming evidence to the contrary. We are satisfied that both appellants were in possession (joint) of stolen property. They gave no explanation as to how they came to be in possession of stolen property. We are therefore satisfied that their conviction was inevitable. They were sentenced in accordance with the law which provides a minimum sentence of seven years' imprisonment.

In our view, there are no merits in these appeals and the same are dismissed in their entirety.

Order accordingly.

Dated at Nairobi, this 14th day of December, 1983 and delivered by O'kubasu, J.

J H S TODD

JUDGE

E O'KUBASU

JUDGE



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