



IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Law, Miller & Potter JJA)

CRIMINAL APPEAL NO 56 OF 1981

BETWEEN

KALILI.....APPELLANT

AND

REPUBLICRESPONDENT

JUDGMENT

The appellant was convicted of handling a stolen motor car by dishonestly retaining it, knowing or having reason to believe it to have been stolen or unlawfully obtained, by a Resident Magistrate at Eldoret. He was sentenced to the mandatory minimum sentence of seven years' imprisonment. He appealed to the High Court but his appeal was dismissed. There is no doubt as to the facts in this case, the only question on this second appeal being whether the conviction was correct in law. We allowed the appeal on March 24, 1982, quashed the conviction and set aside the sentence and we now give our reasons.

The facts are that the car was stolen in Eldoret in October, 1974 by armed men who took it to Uganda. The appellant was not one of the thieves; he is a Sudanese businessman who was living in Uganda at the time. He came into possession of the car two years later, when he bought it, through a friend, at a police sale of lost or abandoned cars at Mbale in Uganda. He had re-registered it in Uganda. It was then cream in colour. The appellant had it resprayed white, because, as he told us, the paintwork had deteriorated due to exposure to the elements. Three years later the appellant fled from Uganda to Kisumu as a refugee from the Amin regime. There he was advised by friends that the car might have been stolen in Kenya and he foolishly erased the original Kenyan registration numbers from the log-book.

In neither court below was consideration given to the question of *mens rea* in handling cases. As was said by Sir William Duffus in *Ratilal v R* [1971] EA 575:

“The necessary *mens rea* must exist at the time of the receipt of the stolen goods so that it must be established that the accused person knew at the time of the receipt that the goods were stolen or that he had reason so to believe.”

In *Karingo and Others v Republic* (Cr App Nos 63 and 105 of 1981, unreported) this Court said:

“What a person’s *mens rea* was at any particular time can only be established by a consideration of all the circumstances attending his continued possession of the goods.”

The circumstances here are that the appellant bought the car openly, at a public auction conducted by the police. He had the car re-sprayed white, a colour very similar to the original cream colour. He re-registered it in Uganda, as he was bound to do as he lived in Uganda and the car was kept there. There is nothing sinister in all this. As to the erasure of the Kenya registration numbers in the logbook, he explained in the magistrate’s court that he did this because they conflicted with the Uganda numbers. He had left the Uganda papers behind in his flight from that country. He had not known that the car was stolen when he was in Uganda. He only learnt of this four years later, when the police began making inquiries after his return to Kenya and his friends told him the car might have been stolen.

In our opinion, the essential element of guilty knowledge that the car had been stolen or unlawfully obtained, was not established on the evidence.

For these reasons we allowed this appeal.

Dated and delivered at Nairobi this 25th day of March, 1982.

E.J.E LAW

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JUDGE OF APPEAL

C.B MILLER

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JUDGE OF APPEAL

K.D POTTER

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JUDGE OF APPEAL

I certify that this is a true copy of the original

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