



Case Number:	Criminal Appeal 56 of 1981
Date Delivered:	25 Mar 1982
Case Class:	Criminal
Court:	Court of Appeal at Nairobi
Case Action:	Judgment
Judge:	Eric John Ewen Law, Cecil Henry Ethelwood Miller, Kenneth D Potter
Citation:	Kalili v Republic[1982] eKLR
Advocates:	-
Case Summary:	<p><b>Kalili v Republic</b></p> <p><b>Court of Appeal, at Nairobi</b></p> <p><b>March 25, 1982</b></p> <p><b>Law, Miller &amp; Potter JJA</b></p> <p><b>Criminal Appeal No 56 of 1981</b></p> <p><i><b>Criminal law</b> - mens rea - offence of handling stolen property - proof of offence - element of mens rea - appellant bought car not knowing it to be stolen - appellants mens rea not considered - appellant convicted of handling stolen property - requirement of mens rea in offence of handling stolen property - whether element of guilty knowledge established - whether conviction proper.</i></p> <p>A car stolen in Eldoret, Kenya, was bought by the appellant at a police sale of lost or abandoned cars in Mbale, Uganda. The appellant reregistered the car and re-sprayed it ostensibly because the paintwork had deteriorated. Three years later, when the appellant went to Kisumu, Kenya, he erased the car's original Kenyan registration</p>

numbers from the log book when he was advised that the car may have been stolen. The appellant was charged with and convicted of handling a stolen motor vehicle by dishonestly retaining it, knowing or having reason to believe it to have been stolen or unlawfully obtained and he was sentenced to seven years' imprisonment. His appeal to the High Court was dismissed and he appealed to the Court of Appeal.

**Held:**

1. Where a person is charged with handling stolen goods, the necessary *mens rea* must exist at the time of receipt of the goods so that it must be established that the accused at the time of receipt of the goods knew or he had reason to believe they were stolen. Neither of the lower courts had considered the question of *mens rea* on a charge of handling stolen property.

2. The *mens rea* of the accused at any particular time can only be established by a consideration of all the circumstances attending his continued possession of the goods.

3. The essential knowledge that the car had been stolen or unlawfully obtained had not been established.

*Appeal allowed.*

**Cases**

1. *Ratila v R* [1971] EA 575 **Applied & Approved**

2. *Karingo & Others v R* Cr Appeals Nos 63 & 105 of 1981 (unreported) **Approved & Applied**

**Statutes**

No statute referred to.

Court Division:	Criminal
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-

Case Outcome:	Appeal allowed.
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(Coram: Law, Miller & Potter JJA )**

**CRIMINAL APPEAL NO 56 OF 1981**

**BETWEEN**

**KALILI.....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

**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 *Ratila 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**

**DEPUTY REGISTRAR**



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