IN THE HIGH COURT OF SWAZILAND

In the matter between:	CRIM. APP. NO. 14/79
MESHACK MTHEMBU	(APPLICANT)
versus	
THE STATE	(RESPONDENT)
CORAM:	C. J. M. NATHAN. C.J.
	D. COHEN, J.
FOR APPELLANT:	IN PERSON
FOR RESPONDENT:	MR. A. TWALA

JUDGMENT

(Delivered on the 17th August, 1979)

COHEN, J.:

The appellant was found guilty by the Magistrate at Mbabane of the theft of a car radio valued at E65 and was sentenced to pay a fine of E180 or 180 days imprisonment plus 60 days imprisonment suspended for three years. (On the 24th May, 1973 the accused had been convicted in the same Court on a charge of theft and sentenced to pay a fine of E100 or 100 days imprisonment, and if the present conviction was justified the appellant may consider himself fortunate that the Magistrate gave him the option of a fine). He now appeals against the conviction on grounds apparently prepared by him without legal assistance and not entirely intelligible.

He complains that witnesses from whom he bought the radio as well as an alternator did not give evidence. Having been found in possession of the stolen radio it was his duty to show that he had come by it lawfully It is to a large extent his own fault that the Crown closed its case against him without calling a person by the name of Tembe. The accused had given the police conflicting versions as to how he had acquired the radio. At first he told the police he had got it from a person at Manzini, whose name

he did not know but when the case was about to be called he said that one Tembe of Mbabane was the person from whom he had acquired it; even at that late stage the police interviewed Teiribe but neither the accused nor the Crown called him as a witness.

It would have been better if the Crown had produced Tembe as a witness, but apparently in ignorance of the law it admitted a statement made by D/c Paul Shabangu that Teiribe had denied any knowledge of the radio. The Magistrate erred in allowing that statement as evidence - it is palpably hearsay in so far as any reliance is placed on its contents. The Magistrate was apparently of opinion that the accused should have called Tembe as a witness and having regard to the duty resting on the accused to give a reasonably satisfactory explanation of his possession of the recently stolen article, he may well be correct. It is, however, in my view not necessary to decide this issue. There was sufficient evidence against the appellant, in particular his original and obviously false explanation, to justify the Magistrate's rejection of his subsequent explanation and to regard this explanation as an after thought. In addition it might be pointed out that the evidence of David Sitiba was that the appellant wanted to sell him the radio for E50, but in argument the appellant stated that he had paid E80 for it. This is clearly a false statement.

In these circumstances I am of opinion that the appellant has suffered no prejudice as a result of the admission of the hearsay evidence and that the appeal should accordingly be dismissed and the conviction and sentence be confirmed,

(D, COHEN)

JUDGE OF THE HIGH COURT

NATHAN. C.J.

I agree, The appeal is dismissed and the conviction and sentence are confirmed.

(C. J. M. NATHAN)

CHIEF JUSTICE

17TH AUGUST, 1979 MBABANE.