

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRI. CASE No. 285/84

In the matter of:

THE QUEEN

Vs.

DANIEL JULY MHLANGA

CORAM: HASSANALI, J.

FOR CROWN: R THWALA

FOR DEFENCE: R C J LITTLER

CHARGE: HEFT

JUDGMENT

(Delivered 28 January, 1985)

HASSANALI, J.

The Accused is charged with the theft of a motor vehicle belonging to Datsun Nissan South Africa. He pleaded not guilty.

Simon Kunene in his evidence stated that he and one David Makama were employed by the Datsun Nissan of South Africa to look after their 60 vehicles at the Suazi Spa Car park. On 16/9/83 when he was patrolling the park, he suddenly heard some persons starting the vehicles. He rushed there and found two of the vehicles being driven off. He said that the other guard was asleep at that time.

According to Assistant Superintendent of Police Sihlabelo, he and D/Serg. Mtetua, in the course of their investigation into the theft of 2 Datsun vehicles questioned the accused at Mobeni Flats, Mbabane on 12/10/83. When the accused was informed that one Bheki Dlamini had been arrested in connection

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with the theft of one of the vehicles, he readily stated that

he had bought a new vehicle and had parked it at the homestead of Xaba, his driver, at Makhwane. He said that it was kept covered with a sail. He left it there because he feared that Bheki would steal it and also because he had become aware that it was a stolen vehicle. The accused also told him that he bought this vehicle for E3000 and paid Bheki E2000 and a further sum of E200 on a later date. The accused did not produce any documents or receipt for the payments. When he was asked as to why he did not report to the police when he learnt that the vehicle was a stolen one, he replied that if had he done so, he would not have got the money he had paid to Bheki.

This witness said that the accused later took him to Makhwane and showed him the vehicle. D/Serg. Mtetwa substantially corroborated the evidence of A. S. P. Sihlabelo.

The Accused testified that he operated a taxi service in Mbabane. According to him since a certain person had agreed to lend him a route permit, he decided to buy another vehicle. In this connection, with the help of one James Ngwenys, he met Bheki Dlamini who said he had a vehicle for sale priced at

E.6000. After much pleading, Bheki reduced it to E3000 provided he paid the money immediately. He then paid E2000 but did not get any documents or the receipt for the payment. He then took the vehicle to Mbabane. While he was waiting for the documents, he came to know that certain vehicles had been stolen at the Swazi Spa. He checked from Dumisa, the brother of Bheki whether his vehicle was a stolen one, and assured by him that it was not. Two days later the police questioned him.

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In cross-examination he said that the persons who sold him the vehicle were not connected with any motor firms. When he was asked as to whether he had any suspicions that his vehicle could be a stolen one, especially when Bheki brought down the price from E.6000 to E.3000, he said that he had no suspicions at all. When he was questioned as to why he had kept the vehicle at Makhwane, a place 25 kilometers away from Mbabane without using it, he said that he did so, fearing someone would steal his vehicle.

He also said that he made a statement to the police where he mentioned that in early October when he learnt that the vehicle was stolen property he had it removed from Mbabane.

The Accused is charged with the theft of a vehicle belonging to Datsun Nissan. The police investigation into this matter led to the accused who admitted that he did buy a Datsun for E.3000 from one Bheki Dlamini but had paid only E.2200. He later took the police officers to Makhwane where he showed them the vehicle which was covered with a sail. This vehicle was later identified by the Crown witnesses as one of the vehicle that was stolen on 16/9. There is no evidence that the accused had participated in the theft of the vehicle or that he had any knowledge that it was stolen when he received it. Although it is not possible to go into a person's mind, nevertheless the Court could look into the circumstances of the case to see whether or not an inference could be drawn from the evidence led in this case. It is admitted that this vehicle was worth about E.8000. According to evidence it was purchased from

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one Bheki for E3000 who reduced the price from E6000. But accused paid only E2200. When questioned as to whether he had any suspicion that the vehicle could be a stolen one since he had paid such a low price, he said that he had no such suspicion. It is hard to believe that after paying so little for an almost new vehicle, the thought did not cross his mind that the vehicle could be stolen property. In my view his explanation on this is untenable. Anyone in his senses would have made further inquiries about the vehicle before he bought it when he found that it had no documents and the price was absurdly low.

Schreiner J A said "the factor of wilfully refraining from making inquiries, if the reason for refraining is to avoid the confirmation of one's suspicion, which one fears might well result is a most important addition to the initial suspicion, where such refraining is present as an additional factor it will generally justify the conclusion that one might otherwise hold to be no more than suspicion is really a state of mind properly describable as conviction or belief."

Again when the accused was asked as to why he took the vehicle to such a far away place as Makhwane and why he had it covered with a sail, he said, he did so, fearing Bheki would steal it. Why should Bheki sell him the vehicle and then try to steal it from him. I also cannot understand as to why he did not use this vehicle for hire since he had a permit to do so. It is also in evidence that the accused had made a statement to the Police to the effect that he had removed the vehicle to

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Makhwane in early October after he had come to know that it was a stolen one. Why did he remain silent and not report the matter immediately to the police as soon as he became aware that it was a stolen vehicle. His failure to do so has created a doubt in my mind as regards to his innocence.

On this evidence it appears to me that the accused had innocently purchased the vehicle but when he

became aware that it was a stolen vehicle, he thereupon without informing the police, removed it from Mbabane and tried to conceal it at Makhuane.

Taking the above factors into consideration. I am of the view that the accused should be convicted of Receiving Stolen property and not of theft.

I accordingly find him guilty as such.

J.A. HASSAMALI

JUDGE