

Cri. Appeal No. 52/1996

In the matter between:

THE KING

vs

MAGUDU BOY NHLABATSI

Appellant

CORAM

S.W. SAPIRE, ACJ  
J.M. MATSEBULA

**Judgment**

(21/11/96)

You were charged in the Subordinate Court of the District of Hhohho held at Mbabane. The charge against you is that on or about 4th September, 1995 and at or near Hawane Mbabane, you did wrongfully and unlawfully and with intent to induce submission by one, Themba Dlamini, that unless he consented to the taking by you of a certain motor vehicle, a Toyota Hilux van, registration number SD 034 RM, or refrained from offering any resistance to you taking the said motor vehicle, you would then and there shoot the said Themba Dlamini and you did thereby, unlawfully take the said motor vehicle being the property of or in the lawful possession of the said Themba Dlamini and you thus commit the crime of robbery.

The driver of the motor vehicle one Themba Dlamini told the Court how the vehicle was taken by you by force on the evening of the 4th of September, 1995. At the time he was in the company of Sabelo Ndzimandze and Sabelo confirms his evidence. Themba Dlamini recognised you as somebody he knew and he says that he saw the firearm in your hand. As I say this evidence is confirmed by Sabelo. But not only would this have been sufficient evidence on which to convict you but you were actually found in possession of the stolen vehicle on the next day. Your explanation for such possession is both contradictory and unbelievable. Your Attorney cross examined the complainant on the basis that this did not happen at all but you claim that indeed you were in possession of the motor car but only because you were put in possession by the complainant who had sold it to you.

You have given no details of the alleged sale, there is no document to prove what you say, nor did you explain to the Magistrate where the money came from to buy this vehicle. A curious thing is that the vehicle appears to have been with its rightful owners right up to the time you took it.

To suggest that the transfer of the motor vehicle pursuant to the sale should have taken place on that evening at night in the veld is nonsense. The Magistrate rightly rejected your explanation and correctly found you guilty as it could not reasonably possibly be true.

When it comes to the question of sentence your appeal as on the conviction is completely without merit. Your record demonstrates you to be a person who is given to committing crimes. In April 1989 you were sentenced to no less than 6 offences. And there were numerous counts against your name on that day.

- 3 -

Moreover on that same day you were sentenced to 6 years imprisonment with no fine on two counts, one of armed robbery and one on theft of a motor car. I am not sure that I know why the Magistrate sentenced you to only 5 years on this count. There are certainly no reasons to interfere with the sentence imposed by him.

The appeals are dismissed.

I agree.

S.W. SAPIRE  
**ACTING CHIEF JUSTICE**

J.M. MATSEBULA  
**JUDGE OF THE HIGH COURT**