

SWAZILAND HIGH COURT

Ndlovu Robert

(Appellant) V

Rex

Criminal Appeal No 22/2000

Coram

SAPIRE, CJ

MATSEBULA, J A

For Appellant

Mr. B. Sigwane

For respondent

Mr. S. Dlamini

JUDGMENT

(20/02/2003)

The appellant was convicted in the Magistrate's Court Mbabane of theft. It was alleged that on 8th January 1999 at Central Transport Administration Mbabane he collaborated with another in stealing motor vehicle parts valued at some E1 425. Both persons said to have been implicated were employees of the CTA and were charged jointly. Both pleaded not guilty. The Appellant's co accused was found not guilty and discharged. The appellant on conviction was sentenced to pay a fine of E500, 00, which we understand has been paid.

The magistrate has examined the evidence thoroughly. In his judgment he has summarized the testimony of witnesses and commented thereon fairly. He has given cogent reasons for rejecting the accused's explanation. We on Appeal will not lightly interfere with his findings of fact.

The Magistrate found that the Appellant had with incomplete or inchoate documentation obtained the spare parts from the stores at CTA. With these parts in a vehicle he was about to drive through a checkpoint at an exit to the CTA premises, when one Shabangu who was there on duty stopped him. The Appellant was alone in the vehicle. Some of the parts were hidden under the drivers seat. Other parts were behind the driver. The magistrate concluded, as he was entitled to do that the Appellant was about to leave the CTA premises, with the spare parts and to deprive the true owner thereof permanently.

The Appellant, who testified, gave several explanations for his behavior. The Magistrate for good and sufficient reason rejected these as unsustainable fabrications. The accused had not made mention of the facts on which he based his explanations at the trial, when first confronted at the exit. The inference of recent fabrication, made by the magistrate is unexceptionable.

On behalf of the Appellant it was argued that no unlawful taking had been proved For this submission to be accepted required that the court overlook the indisputable fact that the Appellant had abstracted the spare parts from the complainant's stores and was in possession thereof preparing to leave the premises when he was confronted. The abstraction was the contractatio, which was complete notwithstanding that the spares had not been removed from the property. The Appellant was clearly correctly convicted

Although there was no appeal on the question of sentence, we are of the opinion that the Appellant was treated with undue leniency on conviction of a crime involving theft from an employer while in a position of trust. The sentence does not accord with the Magistrate's appreciation of the seriousness of the offence

The appeal is dismissed.

Sapire C J I Agree:-

Matsebula J