

IN THE HIGH COURT OF SWAZILAND

Review Case No. 83/2009
District Record No. 1446/2007

HELD AT MBABANE

In the matter between:

THE KING

VERSUS

JWANKIE MAKAMA
KAITANO NYANTUMBA

Date of consideration: 9 March, 2009

Date of Order: 9 March, 2009

ORDER ON REVIEW

MASUKU J.

[1] I have perused the record in the above-mentioned case. I would require the learned Magistrate to attend to the following queries:

1.1. was the offence set out in section 12 (1) of the Theft of Motor Vehicle Act, 1991 proved beyond reasonable doubt? In particular, was there evidence of a breaking and entry into the vehicle by the accused person?

1.2 Does the evidence not suggest, depending on the answer to 1.3 below that, the offence of theft *simpliciter* was committed by the accused person?

1.3 In respect of Count 1 (if held that it was theft *simpliciter*) and in Count 2, in particular, on what basis was the 2nd Accused person found guilty of house breaking with intent to steal, considering that the accused person was not found in *flagrante delicto* committing the aforesaid crime?

Can it not be said that he was found dealing in possession of stolen property knowing or reasonably suspecting it to have been stolen?

[2] The learned trial Magistrate is required to provide responses to the above questions in order to enable this Court to consider same and to decide, depending on the nature of the responses, the next course of action.

DONE IN CHAMBERS IN MBABANE ON THIS THE 9th DAY OF MARCH, 2009.

**T.S. MASUKU
JUDGE**