

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

LEMMUEL DESMOND CARPEDE

Appellant

V

R E X

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice B.K. Molai  
on the 26th day of January, 1988.

The appeal has already been dismissed for the following reasons.

The appellant appeared before the Subordinate Court of Maseru charged with Theft Common alternatively contravening S. 343 of the Criminal Procedure and Evidence Act, 1981. The charge sheet disclosed the following allegations :

"Upon or about the 21st day of July, 1981 and at or near Kempton Park, in the Republic of South Africa the said accused did unlawfully and intentionally steal one vehicle with registration number FLJ 327T the property or in the lawful possession of Richard Adams and did bring the said vehicle to Lesotho in the Maseru district where this Court has jurisdiction over this case."

ALTERNATIVELY

"Upon or about the 28th day of September, 1981 and at or near Roma in the district of Maseru the accused did unlawfully found in possession of a motor vehicle with registration number G 0370 which there is reasonable suspicion that it has been stolen and is unable to give a satisfactory account of such possession."

The appellant had pleaded not guilty to both the

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main and the alternative charges. He was, however, at the end of the trial, convicted on the main charge. A sentence of two (2) years' imprisonment was imposed. The appeal was against both the conviction and sentence.

The evidence of P.W.2 Richard Faccinond Adams, was that he was employed by LTA Construction Ltd as assistant contract manager. On 6th March 1981 the company allocated him a mazda car registration number FLF 327T, engine and chassis numbers 34288 and LX 4 NH44047733, respectively. At about 10 a.m. on 21st July 1981 he had parked the car outside his office buildings at the corner of York and Jubilee roads in Park Town, the Republic of South Africa. He had properly closed the windows, locked the doors and kept the ignition key in his pocket. At about 5 p.m. on the same day he went for the car but found it missing from where he had parked it. As he had not authorised anybody to take away the car, he reported the loss to the police. I shall return to P.W.2's evidence later in this judgment.

According to P.W.3, Lt. Col. Motsoari, on 28th September, 1981 he was at Roma in the district of Maseru when he noticed a car with Lesotho registration numbers G 0370 parked next to St. Joseph hospital. The occupants of the car were the appellant and two other people. On inquiry P.W.3 found that the appellant and his two companions originally came from the Republic of South Africa. Asked about the car the appellant who was the driver thereof explained that he had bought it from a certain person in Maseru Township. It was, therefore, his property. He could not, however, produce any documents covering the car. P.W.3 inspected the car and found that its engine and chassis numbers were 34288 and LX 4 NH44047733, respectively.

The fact that three people from the Republic of South Africa were travelling in a car with the Lesotho registration numbers and were unable to produce any documents as proof that it belonged to any of them aroused suspicion, and rightly so in my opinion, in the mind of P.W.3. He ordered that the car be brought to the police station where it was kept whilst investigations

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were being carried out.

The evidence of P.W.4, Lt. 11 Letsunyane, was that he was the investigating officer in this case. After it had been brought to the police station he inspected the car, the subject matter of this case. He confirmed that it bore the Lesotho registration numbers G 0370. To the best of his recollection its engine and chassis numbers were Z 34288 and L x 4 NH4404777. He subsequently met and asked the appellant how he had acquired the car. The appellant's explanation was that he had bought it from one Tseliso Mahase of Upper Thamae

With the assistance of the Chief P.W.4 looked for and found Tseliso Mahase of Upper Thamae who, however, denied to have ever sold a car to the appellant. When P.W.4 later on confronted Tseliso Mahase with the appellant the latter said it was not Tseliso Mahase he had been talking about. The appellant was then released to go and find Tseliso Mahase he had been talking about. He never brought Tseliso Mahase nor, indeed, did he bring any documents as proof that he had bought the car which he claimed to be his property.

As the car appeared to have been registered in the district of Quthing, P.W.1 'Molaoa Azael Ramaipato, was called as a witness. He testified that he was employed in the Sub-Accountancy at Quthing. As such one of his responsibilities was to register motor vehicles. According to the files in his possession the vehicle with registration numbers G 0370 was still registered in the name of one Isaac Tsokolo Makuebu and not the appellant or Tseliso Mahase. It was a white Toyota Hi-Ace and not a Mazda car.

Returning to his evidence, P.W.2 told the court that after he had reported his loss to the police he was subsequently called to Maseru police station where on 30th October 1981, he identified the car, the subject matter of this dispute, as his missing car. He had brought with him the registration certificate (Exh.A) and the ignition key (Exh.1) of his car. Although the registration number plate on the car was not that of

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P.W.2's missing car, the engine and chassis numbers on the car tallied with those on his registration certificate. With the ignition key in his possession P.W.2 was able to unlock the driver's door the petrol cap and the boot of the car the colour of the car and the speakers which he himself had installed on its doors were all still intact. He had, therefore, no difficulty in identifying it as his car which had gone missing on 21st July 1981. Only a false registration number plate had been fixed on it.

In his evidence on oath the appellant did not dispute that the car, the subject matter of this dispute, originally belonged to P.W.2 from whom it went missing on 21st July, 1981. His real contention was that he had lawfully bought it from a certain Tseliso Mahase of Upper Thamae and had not, therefore, stolen it from where P.W.2 had parked it in the Republic of South Africa.

It is to be observed, however, that the appellant did not dispute that when he was confronted with him Tseliso Mahase denied that he had ever sold the car to him. Although he claimed that Tseliso Mahase brought to him by P.W.4 was not the one from whom he had bought the car the appellant was released to go and find the real Tseliso Mahase, he had been referring to. He could never find him.

In my view the reason why the appellant could not find Tseliso Mahase was very simple viz. that there was no such person as Tseliso Mahase from whom he had bought the car, the subject matter of this dispute. I am fortified in this view by the fact that the appellant totally failed to produce any documents whatsoever as proof that he had bought the car which he claimed to be his property.

There was no doubt, on the evidence, that the car, the subject matter of this dispute, was stolen on 21st July, 1981. On 28th September 1981 it was however, found in the possession of the appellant. In our law the appellant as the person in whose possession the recently stolen car was found, was presumed to have

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stolen it unless he could, on a balance of probabilities, prove the contrary. He failed to do so and the presumption remained valid.

It was argued that the charge sheet under which the appellant was convicted was defective, presumably, in as much as it alleged that the vehicle was stolen at or near Kempton Park instead of the corner of York and Jubilee roads in Park Town. Although I agreed that to that extent the charge sheet might have been defective, in my opinion, the defect (if any at all) was cured by the evidence in accordance with the provisions of S. 158 of the Criminal Procedure and Evidence Act, 1981 which section reads, in part:

"158. Whenever a charge in respect of any offence is defective for want of the averment of any matter which is an essential ingredient of the offence, the defect shall be cured by evidence at the trial in respect of the offence proving the presence of such matter which should have been averred ....."

The evidence clearly showed that the place from where the car was stolen was the corner of York and Jubilee roads in Park Town and not Kempton Park. That being so, I came to the conclusion that the defect if any, was cured by the evidence and the trial court correctly convicted the appellant on the main charge.

Notwithstanding that the appellant was a first offender and in mitigation pleaded with the court for leniency the trial court sentenced him to two (2) years' imprisonment. I took the view that the crime of car theft was such a menace in this country that it would not be proper for me to interfere with the sentence of 2 years' imprisonment imposed by the trial court.

As it has already been pointed out earlier the appeal was accordingly dismissed.

J U D G E.

26th January, 1988.

For the Appellant : Mr. Khauee  
For the Crown : Miss Nku.