

IN THE HIGH COURT OF LESOTHO

In the matter between:-

LENKA LETSIE

Appellant

and

R E X

J U D G M E N T

Delivered by the Hon. Mr. Justice J.L. Kheola
on the 23rd day of May, 1990

The appellant was convicted of contravening section 344 of the Criminal Procedure and Evidence Act 1981 and was sentenced to five years' imprisonment. He is appealing to this Court on two grounds, namely:

- (a) The appellant did on a balance of probabilities establish the reasonable cause for his belief that the motor vehicle in question was the property of, or in the lawful possession of the seller of the same at the material time.
- (b) The Crown has not established beyond a reasonable doubt that the appellant had the requisite intent.

The facts of this case are that in 1976 Mothomang Mafatle (P.W.2) bought a white Toyota Hi-Ace vehicle. It was a 1972 model. The vehicle was duly registered and given No. A5820. The engine number of the vehicle was 12R0233467 but it had no chassis number. A registration certificate (Exhibit "A") was issued by the registering authority and it clearly showed that vehicle had no chassis number. P.W.2 used the vehicle until 1979 or 1980 when he sold it to one Khorong Mabatla. Before change of ownership could be effected, Mabatla's son damaged the engine of the vehicle. Mabatla was unable to continue his periodic payments after the vehicle's engine was damaged. P.W.2 took back his vehicle and sold it to one Tseliso Ntsane (P.W.4) who removed the broken engine and fixed the engine of his van in it. He again took out the van's engine and sold the body to one Bofihla Motsamai. In all these transactions the original registration certificate is still being passed to the new buyer without any change of ownership. The original registration numbers (A5820) were also transferred unchanged in all the transactions.

The version of the accused is that he bought the vehicle before court from one Bofihla Motsamai who gave him Exhibit "A" and explained to him that because he had not paid the full purchase price of the vehicle there had been no change of ownership. The vehicle's engine numbers tallied with the numbers appearing in the registration certificate and it was clearly indicated that the vehicle had no chassis numbers.

The police failed to find Bofihla Motsamai and their investigations revealed that the vehicle before Court was a 1983 model and not a 1972 model. The experts found out that the engine numbers on the engine block were false, the original numbers had been removed.

There is no doubt in my mind that the vehicle before Court is a stolen vehicle and not the original vehicle that was bought by P.W.2 Mothomang Mafatle. However, the question to be decided by the court is whether it can be said that the appellant bought the vehicle without having reasonable cause, proof of which shall be on him, for believing at the time of the acquisition or receipt that the goods are the property of the person from whom he receives them, or that person has been duly authorized by the owner thereof to deal with or dispose of them.

Mr. Moorosi, counsel for the appellant submitted that the court a quo convicted the appellant solely on the ground that the vehicle in question has been proven beyond reasonable doubt to have been stolen, whereas the section under which the appellant has been convicted requires absence of reasonable cause for believing that the seller was the lawful owner or an authorized person. He submitted that the appellant had proved on a balance of probabilities that he had reasonable cause for believing that the vehicle was the lawful property of Bofihla Motsamai. He received the vehicle together with lawful documents which tallied with it. The seller explained to him why the documents were not

in his names, and as can be seen from evidence, it is a common practice among individuals who sell vehicles not to effect change of ownership before they are paid in full.

I agree with the above submissions because in the judgment of the court a quo there is nothing to show that the question of reasonable cause for believing that Bofihla Motsamai was the lawful owner of the vehicle in question was ever considered. The mere fact that the vehicle had been stolen and the original numbers changed could not support a conviction because the appellant could not have known that it was stolen. The evidence by the Crown is that Bofihla Motsamai bought the body of the original vehicle and we can only speculate that he later found an engine and changed its numbers so that they could tally with those appearing in Exhibit "A". That the numbers were false could not be easily seen by a non-expert. The local police were helped by a certain Sergeant Kamaer of the South African Police who has a vast experience in motor vehicles. It would not have been easy for the appellant to notice that the numbers were false especially because the vehicle was accompanied by a genuine registration certificate and proper number plates.

The evidence by the Crown established beyond any reasonable doubt that Bofihla Motsamai was the lawful owner of at least the body of the vehicle before court. I understand "body" to include the chassis and wheels minus the engine only. I fail to understand how the Crown can at the same time claim that the appellant did not have a reasonable cause for believing that Bofihla Motsamai was the

lawful owner of the vehicle before Court when their own evidence proves that he was the lawful owner of at least the body. I have already said that the way Bofihla Motsamai replaced the original engine numbers of original vehicle was done so well that a layman could not easily detect that the numbers had been tampered with. Furthermore, there were proper documents and proper number plates accompanying the vehicle.

I agree with Mr. Moorosi that as can be seen from the evidence there is a common practice among individuals who sell vehicles not to effect change of ownership before they are paid in full. This is the reason why P.W.2 parted with Exhibit "A" and gave it to one Khorong Mabatla. When the latter failed to continue with his periodic payments, P.W.2 fetched the vehicle and its registration papers and sold it to one Tseliso Ntsane (P.W.2).

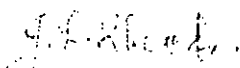
The case was conducted in such a confused manner that one is unable to connect the evidence of all the witnesses into one comprehensive story. The evidence of P.W.1 'Mamobotla Mobebe is that she bought a body of a vehicle from one Lekoala Peter for M200-00. The body was white but the rear door was navy blue. This body was eventually taken by Sergeant Maapesa and kept at the police station. P.W.2 identified it during the investigations as the body he sold to P.W.3 but the latter was not shown the body seized from P.W.1 and to say whether or not it was the body he sold to Bofihla Motsamai nor was he asked to identify the body of the vehicle before Court as the one he sold to Bofihla Motsamai. The position is that we have two bodies before Court but the most important witness on this point was not asked to assist the Court.

Because the defence did not challenge the evidence of P.W.2 when he identified the body recovered by Sergeant Maapesa from P.W.1, I shall come to the conclusion that the vehicle before Court Exhibit "1" is a stolen vehicle, i.e. the engine, the chassis and the body were all stolen and **assembled** to make the final product we see before us now.

For the reasons stated above the appeal is upheld. The following order is made concerning the exhibits:

1. The vehicle Exhibit "1" is forfeited to the Crown.
2. The registration certificate Exhibit "A" and the numbers plates A5820 must be destroyed by the police.
3. The body which was seized from P.W.1 (Exhibit "3") must be given back to her.
4. Exhibit "2" are forfeited to the Crown.

It is recommended that Exhibit "1" should not be sold to members of the public because it can again easily be used to steal other vehicles.


J.L. KHEOLA
JUDGE

17th October, 1990.

For Appellant - Mr. Moorosi
For Crown - Mr. Qhomane.

c.c. Officer Commanding C.I.D. -
Maseru District.