

IN THE SUBORDINATE COURT OF THE FIRST
CLASS FOR THE LUSAKA DISTRICT
HOLDEN AT LUSAK

SSPB/134/2016

(Criminal Jurisdiction)

THE PEOPLE

V.

SIMMS MUBU

JUDGMENT

The juvenile offender is charged with one count of theft contrary to section 272 of the Penal Code Chapter 87 of the Laws of Zambia. Particulars of offence allege that on a date unknown but between October, 2016 and 8th November, 2016, the juvenile offender at Lusaka in the Lusaka District did steal 7 wall sockets and 1 cooker control unit altogether valued at K 1,480.00 the property of Vernon Nkhuwa.

The juvenile offender pleaded Not Guilty.

I warn myself at the outset that the onus is upon the prosecution to prove the case and the case has to be proved beyond all reasonable doubt. There is no onus on the offender to prove his innocence. If after considering all of the evidence adduced for and against the charge there is any doubt in my mind as to the guilt of the offender, that doubt shall be resolved in his favour.

In order to establish a finding of guilty, the prosecution must satisfy me upon each and every ingredient of the offence charged.

Section 265(1) of the Penal code defines theft in the following terms:

A person, who fraudulently and without claim of right takes anything capable of being stolen..., is said to steal that thing.

Therefore, the prosecution must prove the following ingredients:-

1. that the offender acted fraudulently and without claim of right
2. that in so acting, took property namely sockets and cooker control belonging to the complainant herein
3. that he took the said property with intent to permanently deprive the complainant.

In support of its case, the state called four witnesses.

PW1 was the complainant whose testimony was that on a day he cannot recall, his caretaker by the name of Jeff phoned him to inform him that he had lost his keys for the house belonging to PW1 that he takes care of. PW1 said he asked Jeff to collect the spare keys from him. The following day, PW1 visited the house and discovered that the sockets and cooker control unit already fixed to the wall were missing and some cables had been tampered with to suggest that someone wanted to remove them. According to PW1, he thought that the person that Jeff had been staying with (with his permission) stole those items because he had been with Jeff for a long time and nothing like this has ever happened.

It was PW1's evidence that he only met this person, the now juvenile offender, at Rosedale police post after he was apprehended. He also told court that some wall sockets were recovered after Jeff pointed out the shop where the juvenile offender liked hanging out and where he suspected he could have sold the items. PW1 further told court that he went to the shop with his brother and met the owner of the shop, a lady, whom he told that she was selling his items. The lady said she just bought the items from someone and described that person. She undertook to call PW1 when he returned to the shop. However, the call PW1 received was to the effect that he did not show up. The items were subsequently taken to Rosedale Police. Later, Jeff managed to apprehend the juvenile offender.

When cross examined, PW1 stated that he does not recall the juvenile telling him that his caretaker gave him the items.

PW2 was Jeffrey Chulu, PW1's caretaker. He testified that in October, 2016, he received the juvenile offender and allowed him to stay with him as he did not have a place to stay. Two months later, the juvenile's sister joined them. Within the two months of being together, a key went missing and not satisfied with the turn of events, he asked the juvenile offender to leave the very next day. When he returned from work, he found the house locked. After getting a spare key from PW1, he discovered that the keys had been locked in. He also discovered that the sockets were missing plus the cooker control unit and cables were pulled out from the ceiling. When PW1 arrived, he noted that his friend, the juvenile offender could have stolen the items and vowed to catch him. According to PW2, he began searching for the missing items in hardware stores as they are quite unique and uncommon until he came across a certain lady who had them. He said he called PW1 who went and checked and found that they were the ones. PW2 identified the 7 sockets and cooker control unit in court and they were marked ID1.

It was PW2's further testimony that after recovering the items, he started searching for the juvenile until he found him and apprehended him. He took him to Rosedale police post.

When cross examined, PW2 denied sending the juvenile offender to go and sale ID1 so that they could buy food. He also denied the assertion that he directed the juvenile offender where to sale the items. He said he found the place because he went round in search of the items. He stated that he begun searching for the juvenile offender after recovering the stolen items. He said the lady to whom he sold the items confirmed that it was the juvenile that sold them.

PW3 was Ruth Banda, a business lady that runs a shop. She testified that in October, 2016, she was in her shop when a young man, the now juvenile offender in the company of a woman with a baby on her back came with merchandise (ID1) for sale. She said she asked him where he got the items and he explained that he was an electrician and the person whom he worked for had excess hence giving him. PW3

told court that the juvenile sold the cooker control unit at K 35 and each socket at K 25 and she paid him. After two days, a man walked into the shop and asked for sockets with the brand 'Legrant'. The sockets brought by the juvenile had the same brand. PW3 said she told the man she had them but that they were not in plastics. When she took out the sockets, the said man told her that those were the sockets he was looking for and that the same were stolen. She did not dispute his allegation due to the circumstances in which she bought the items. The man got the items and said he would report matter to the police. He also asked her to contact him once the seller showed up. Subsequently, she was informed that the juvenile offender had been apprehended and she was called to give a statement.

When cross examined, PW3 stated that the juvenile did not inform her that he was sent to sale the items. He just told her that he was an electrician. She said she paid K210 for the items and not K100. She also said she initially gave him K 100 which he said he wanted to give the lady he was with and later on the same day, she gave him the balance.

PW4 was Sgt, Titus Phiri of Westwood Police Station whose evidence was that on 15th November, 2016, he received a report of theft from PW2. Acting on the report, he interviewed the juvenile offender who informed him that he was given the items to sale by the caretaker (PW2). PW4 was not satisfied with the reply hence made up his mind to charge and arrest him for the subject offence. The juvenile freely and voluntarily denied the charge. As custodian of the recovered items, PW4 tendered them in evidence and they were admitted marked P1.

When cross examined, PW4 stated that the juvenile informed him that the caretaker gave him the items to sale but did not apprehend the said caretaker because he did not suspect him especially that he is the one that brought the juvenile to the police. PW4 also stated that the purchaser of the items did not tell him the whole amount she paid for the stolen items but merely mentioned the unit prices.

In his defence, the juvenile opted to give evidence on oath and called no other witness.

The juvenile testified that he stayed with PW2 for two months and during that period, he brought his girlfriend. One day, on a Sunday, PW2 announced that there was no food at home and that they would sale sockets. Thus, PW2, his girlfriend and the juvenile left home with sockets. When they got to Garden House market near a hardware store, PW2 instructed him to proceed to sale the items as there was a person he was avoiding. He instructed him to sale the sockets at K25 and the cooker control at K 35. It was the juvenile's evidence that he and PW2's girlfriend entered the shop and presented the items to the lady there (PW3 herein). She told them that selling the items was difficult thus could only pay K 100 for all the items. PW3 gave them K 100 and they left. When they joined PW2, he was annoyed with them for selling all the items at K 100. He then gave him the keys and asked him to go back to the house. According to the juvenile offender, PW2 returned home around 19h00 in a drunken state. When asked about the food he had promised to buy, PW1 got upset and asked him to leave the house. He said he did not owe the juvenile an explanation. Since it was night, he asked to leave the following morning. In the morning, PW2 told him to go for good and that is how he left and never went back. Days later, on a Saturday, he was at work when he was informed that someone wanted to see him. It was PW2 who picked him and to his surprise took him to the police where he accused him of stealing. PW1 was called and according to the juvenile offender, he told him that PW2 gave him the items but PW1 defended him saying he could not have stolen.

When cross examined, the juvenile admitted selling P1 to PW3. He denied the assertion that he was in the company of his sister. He said he was with PW2's girlfriend. The juvenile offender denied stealing the items. He insisted that he was given to sale by PW2. He also denied the assertion that he ran away from home after stealing. He said he was chased from the house by PW2. According to the juvenile, the trouble began with the fact that he sold the items at a cheaper price.

This is the evidence heard during the proceedings. I now state my findings of fact.

I am satisfied that sometime in October, 2016, the juvenile offender was given a place to stay in the house that PW2 was keeping for the complainant. I am also satisfied that after some time, the juvenile offender sold the sockets and cooker control unit (P1) that had already been affixed to the complainant's house. It is a fact

that the said items were recovered from the shop where they were sold. It is not in dispute that the complainant did not give the juvenile offender or anyone else for that matter the sockets that he sold. P1 was thus taken without the complainant's consent.

The juvenile claims not to have stolen P1 and is adamant that he was given P1 by PW2, the caretaker, to sale in order that they could buy food from the proceeds of sale. If this is true, does that exonerate the juvenile from liability? Can he be said not to have stolen the items?

The evidence reveals that PW2 did not report to PW1 that there had been a theft at ~~the~~ house. It took PW1 to visit for him to learn about the theft. One wonders why PW2 did not report the theft immediately he discovered it. Furthermore, the juvenile from the onset, that is to say, from the time he was at the police station has maintained his story that he was sent to go and sell the items by PW2. In light of this, I cannot help but wonder if there is truth in this version of events. I cannot come to a definite conclusion because both PW2 and the juvenile offender have their own interests to serve. It is PW2's word against the juvenile's word.

Nevertheless, as found, the sockets and the cooker control unit were affixed to the house and it is common cause that the juvenile offender knew that the house was not PW2's but that he was merely a caretaker. The juvenile testified that he, PW2 and his girlfriend left home with the sockets and went to the market. It follows, therefore, that the juvenile offender knew that the items were being stolen from the house and yet he agreed to go and sale them. Thus, if it is true that PW2 gave him the items to sale, then the juvenile acted jointly with him because he had knowledge of the theft. Either, he and PW2 removed the sockets together or he observed PW2 removing the sockets. Either way, the fact is that the juvenile offender knew that the items were being taken without the actual owner's permission.

It is on record that he informed PW3, the owner of the shop where the items were sold, that he was an electrician and was given the items by his employer because they were in excess. Clearly, he made up this story to cover the fact that he was selling stolen items. This made up story fortifies my resolve that the juvenile knew that he was selling stolen items.

According to section 21(1)(b) of the Penal Code:

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say:

(a)...

(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence

Thus, by letting PW2 remove P1 or by assisting him remove P1 from the house and further by selling P1 knowing that they were stolen items, the juvenile offender aided in the theft and consequently cannot escape liability.

So, whichever way one looks at the issue, that is to say, whether PW2 truly is the one that gave the juvenile the items to sell or whether the juvenile acted on his own, the fact remains that the sockets and cooker control unit were taken fraudulently, without a claim of right made in good faith and with intent to permanently deprive PW1 of his property. Simply to say, the juvenile offender stole P1 either on his own or with PW2.

In the circumstances, I enter a finding of GUILTY against the juvenile offender.

DELIVERED THIS 2ND DAY OF MARCH, 2017.



Mwaaka Chigali Mikalile (Mrs)
PRINCIPAL RESIDENT MAGISTRATE