



IN THE SUBORDINATE COURT OF THE FIRST CLASS
FOR THE LUSAKA DISTRICT
HOLDEN AT LUSAKA
(Criminal Jurisdiction)

The People versus EDWARD MWEWA
BEFORE: **HER WORSHIP A.N WALUSIKU**
FOR THE PEOPLE: **MUNSAKA – PUBLIC PROSECUTOR**
FOR THE ACCUSED: **IN-PERSON**

J U D G E M E N T

In this case the accused stood charged with one count of Theft contrary to section 272 of the Penal Code chapter 87 of the laws of Zambia. The particulars of the offence allege that the accused on 04/04/17 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, did steal one side view mirror valued at K800 the property of BRENDA NAKAZWE.

The accused pleaded not guilty hence leading to this trial.

WARNING

I warn myself from the outset that the burden of proof in criminal proceedings such as the present one lies squarely with the Prosecution. Notwithstanding the defenses available to an accused person, the primary responsibility to prove the allegation against such a person remains with the Prosecution.

The Prosecution in this case is required to prove each ingredient that constitutes this offense as charged **beyond all reasonable doubt**. I must reiterate that proof **beyond reasonable**

doubt is not synonymous with proof beyond any **shadow of doubt**. In the event of reasonable doubt, such doubt must be decided in favor of the accused and he must be accordingly acquitted.

At this point I propose to analyze the law creating this offence before considering the evidence adduced by both parties herein.

ANALYSIS OF THE LAW

The general offense of theft is created by section 272 of the penal Code which is couched in the following language;

"Any person who steals anything capable of being stolen is guilty of the felony termed 'theft', and, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, is liable to imprisonment for five years."

For the purposes of this offence the term 'theft' is defined by section 265(1) of the Penal code as follows;

"A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing."

In the same vein the word 'taking' or *asportation* is defined by sub section 5 of section 265 in the following terms;

"A person shall not be deemed to take a thing unless he moves the thing or causes it to move."

Further, sub section 2 of the same section in defining fraudulent taking provides that a person who takes or converts anything capable of being stolen is deemed to do so

fraudulently if he does so with any of the following intents, that is to say among other things an intent permanently to deprive the general or special owner of the thing of it.

In the light of the foregoing therefore the onus is on prosecution to prove each of the following ingredients beyond all reasonable doubt;

- a) Taking of the items as per indictment
- b) The identity of the offender
- c) Lack of bonafide claim of right
- d) The intent of the offender at the time of taking.

Having analyzed the law creating this offence it has now become absolutely necessary to consider the evidence adduced herein in order to satisfy myself as to the guilt of the accused. In their Endeavour to prove the guilty of the accused the prosecution called to court 2 witnesses. On the other hand the accused opted to remain silent. This he is entitled to.

The first prosecution witness in this case was HAPPY KAUMBA a Police officer based at Emmasdale Police station under Traffic section. On 03/02/17 he was on duty as officer on call. He was also the station driver. Whilst on duty around 0300hrs he parked the vehicle at the police station and went to rest. Around 0530hrs he came out to check on the vehicle. As he approached the vehicle he heard a bang from the vehicle that was parked at the police station and saw a person seated in one of the vehicles impounded by police. He went closer to the vehicle and found a man seated in a Toyota Spacio Reg No ALR 753 which was impounded by police. Outside the vehicle was a blue bag and a view mirror. He asked that person as to what he was doing there and that person told him that he had been sent by his friend to remove the side view mirror. He asked him if he knew the owner of the vehicle and he said that he did not know. He then asked that person to carry the bag and the mirror to the office. At the station he detained him for Theft and handed him over to the CID office. He identified accused. He also identified the side view mirror and the bag marked P2.

In XXN he told the court that he saw accused seated in a Toyota Spacio. He heard noise from a Toyota Spacio. Accused removed the mirror from the Toyota Spacio. The side view mirror was found down the Spacio and the Spacio had no side view mirror. . He was alone when apprehending accused. The court was going to believe because he asked accused as to what he was doing at the Police station that time and if accused knew the owner of the vehicle.

PW2 was MULEMWA KAYOMBO the Arresting officer based at Emmasdale Police station. On 30/03/17 he was on duty when he was allocated a docket of case of Theft from motor vehicle in which the complainant was BRENDA NAKAZWE. She complained that her motor vehicle which was parked as an exhibit at the Police Toyota Spacio Reg No. ALR 753 Silver in colour had its side view mirror stolen. She valued the side view mirror at K800. The mirror was recovered and the accused was already in custody. He came to know him as Edward Mwewa. He interviewed accused in connection with the offence but he failed to give him a satisfactory reply and so he charged and arrested accused for Theft . Under warn and caution statement in Bemba the language that he appeared to understand better he gave a free and voluntary reply denying the charge. He was handed over a side view mirror and a bag which he identified marked P1 and P2. He also identified accused.

In XXN he told the court that he was handed over accused and the exhibits. He was not there when accused was apprehended. Accused was found with P1 and P2.

Accused was put on his defence. He chose to remain silent. This he is entitled to do; there is no onus on the accused to speak in his own defence.

This is the evidence that I received. I now state my findings of fact. I find that a side view mirror was stolen. I find that it was stole from a Toyota Spacio vehicle. I find that accused was not allowed to take the said vehicle. I find that his intention was to deprive the owner

of the said property permanently. I find that accused had no claim of right to the said property.

Having found the facts I must now apply the law to those facts. I ask myself if on these facts the accused has in law committed the offence charged. But has the prosecution established beyond reasonable doubt that it was accused that stole the said view mirror?

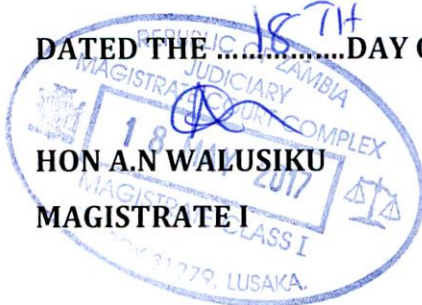
What evidence is there that accused stole the side view mirror. There is evidence to this and in particular that the side view mirror from the Spacio was found with accused. Further accused was found at the Police station during awkward hours and was not there to report anything but to steal from exhibit motor vehicles parked at the police station. Accused did not dispute that he was not found at the police station and in a car that did not belong to him. Accused was also found with a view mirror from the said vehicle. It was not his mirror. He did not say as to where he got the mirror from. The inference being that the mirror that he had was stolen from the vehicle that was parked at the police station.

I have no difficulties to connect accused to the offence.

In light of the above I find the case of Theft C/S 272 of Cap 87 proved beyond reasonable doubt. I find accused **GUILTY** and **I CONVICT** him accordingly.

DELIVERED IN OPEN COURT

DATED THE 18TH DAY OF MAY 2016



HON A.N WALUSIKU
MAGISTRATE I