

Judgment No. S.C. 134/83 Crim.
Appeal No. 179/83

MOLLARD NDABAMBI v THE STATE

SUPREME COURT OF ZIMBABWE,
GEORGES, CJ & BECK, JA,
HARARE, OCTOBER 24 & NOVEMBER 14, 1983.

The appellant in person P. Batty, for the respondent

BECK JA: In March 1983 the appellant pleaded not guilty in the magistrates' court to a charge of having stolen a Ford Consul motor-car on 3 February 1982, the property of one Peter Nathaniel Short, - but was convicted. Previously, at the end of December 1982, he had been tried before another magistrate on a charge of having stolen the same Ford Consul car from Peter Nathaniel Short on 14 December 1982. To that charge the appellant had pleaded guilty. Neither magistrate sentenced him and he was transferred to the High Court to be sentenced in respect of both offences. This was done by SANDURA J who sentenced the appellant to two years' imprisonment with labour for the first theft committed on 3 February 1982 and to three years' imprisonment with labour for the second theft of the same car from the same complainant committed on 14 December 1982. In addition, the learned judge brought into operation a suspended sentence of four months' imprisonment with labour that had been imposed upon the appellant in June 1981 as part of a sentence for fraud.

The/

The appellant applied for, and was granted by me, leave to prosecute an appeal in person against both conviction and sentence.

The evidence revealed curious behaviour on the part of the appellant, who is a young man of 19 or thereabouts. The complainant's locked motor-car having been stolen on the afternoon of 3 February 1982, from the vicinity of the Jameson Hotel, it was seen by the complainant himself a fortnight later, bearing a new registration number (280-750M), being operated by the appellant from what was then called a "pirate" taxi rank near the corner of Samora Machel Avenue and Fourth Street. The complainant opened the bonnet and removed the rotor arm to immobilise the car, and informed the appellant and his passengers that the car had been stolen from him. He ordered them all out of the car and they obeyed. He then decided to drive the car away himself and to this end replaced the rotor arm, at which stage the appellant re-appeared, pushed the complainant away from the car, got in and drove off in it himself, running over the complainant's foot in the process.

Less than three weeks later the complainant once again saw his car. It was being driven in the direction of Dzivarasekwa. He informed the police and a message was passed to all patrol Cars to look out for Ford Consul 280-750M. A patrol Officer saw the car parked outside a house in Dzivarasekwa. The appellant was in the house and told the Patrol Officer that the car was his, but he could not produce a registration book or insurance policy in respect of it. Upon being asked to accompany the police to the Police Station the appellant was

obstructive and had to be subdued.

He was arrested and charged with the theft of the car but/

but was granted bail which he estreated and for the next nine months the police did not find him. The car mean- while was returned to its lawful owner, Mr Short, who removed the false number plates and restored to the car its proper number, 293-173 Q.

The car was, as I have already indicated, again stolen by the appellant on 14 December 1982. On this occasion the appellant stole the car from Mr Short's house in Milton Park, though how he came to know that the car was there was not revealed in the evidence. For some reason the car was impounded by the police a few days later, and on 28 December 1982 the appellant presented himself at the Vehicle Inspection Depot to collect the vehicle. The police arrested him there.

The car had once again been fitted by the appellant with number plates bearing the number 280-750M. This was the number of a Ford Consul that the appellant had once owned but which was attached and sold in execution in October 1981 in satisfaction of a judgment debt. That car was bought by a firm of car breakers at the execution sale, and the appellant knew that.

Although the appellant had pleaded guilty to this second theft, for which he was swiftly brought to trial on the last day of December 1982, just three days after he was arrested, he pleaded not guilty three months later when he was brought to trial for the first theft of the same car. At that trial he alleged that he had bought the car from a stranger called John Thomas, or John Tom, on 6 February 1982. He said that in the car itself, at the time of his arrest in Dzivarasekwa in March 1982, was a note-book in which the name

and address (which he could not remember) of John Thomas was recorded, as also the price they had allegedly agreed upon/

upon for the car, and the amount of the first instalment that the appellant had allegedly paid to John Thomas and against which he was given possession of the car. He asked that this book, which the police must have found - he said - in the car, be brought to court and that John Thomas be located and brought to testify. However, the police detail who took possession of the car in Dzivarasekwa denied that any such note-book was in the car, and the appellant could not, as I have said, tell the magistrate where John Thomas lived or worked.

Asked why he changed the car's number plates, the appellant said that John Thomas had refused to part with the registration book until the agreed price was fully paid to him and he - the appellant - thought it wiser to use in the meantime the number of his previously owned car of the same make that had been sold to car breakers and was no longer on the road.

The appellant's unusual doggedness in brazenly driving off in the car after the complainant had first found him in possession of it in Samora Machel Avenue; in locating the complainant's residence and in re-stealing the same car from him months later; and in thereafter boldly reclaiming it from the V.I.D. after the police had impounded it, made me wonder whether it might not, after all, be true that he had bought the car and was labouring under a sense of grievance at its recovery by the complainant, although the magistrate had rejected his evidence as false. Accordingly I granted, his application for leave to appeal in person. When the appellant appeared before us he claimed to have now remembered the address in Mabvuku where John Thomas could be found, and we postponed the appeal for some weeks so that John Thomas could be brought/

brought before us, Mr Batty, who appeared for the State, very fairly raising no objection to John Thomas' evidence being heard by us, if he could be located.

What happened thereafter removed all traces of uncertainty as to the appellant's guilt that a reading of the record had fostered and served to emphasise again the very real advantage that a trial court possesses in being able to see and hear the witnesses. There was no street in Mabvuku of the name that the appellant had given, but enquiries were made at the house number given by the appellant in three streets with names that were somewhat similar. At none of those houses, or in the neighbourhoods, did anyone know of a person called John. Thomas, or John Tom, but at one of them was a young man, the son of the house-owner, called Tom Nyampambadza.

This name was mentioned to the appellant who asked that the young man be shown to him. On seeing him the appellant claimed that he was indeed the person who sold him the car. In consequence, Tom Nyampambadza was brought before us at the resumed hearing of the appeal and he gave evidence. It was perfectly clear that Tom Nyampambadza is an artless, unsophisticated soul who does not know the appellant from a bar of soap and who is most certainly not the kind of person who would even know how to drive a car, which he says he cannot do, let alone possess one for sale. His honesty, puzzlement and indignation were patent and were only matched by an astuteness and persistence on the appellant's part in the course of a dogged cross-examination that was most revealing. In the result we had no hesitation whatsoever in finding that Tom Nyampambadza was falsely alleged by the appellant to be John Thomas, and that the conclusion is inescapable that no such person as John Thomas

ever sold the complainant's car to the appellant.

Accordingly/

Accordingly we were satisfied that the appellant was properly convicted on both charges. The sentences that were imposed were entirely appropriate. The appeal was therefore dismissed at the conclusion of argument.

GEORGES CJ: I agree.