

CRI/A/8/80

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MBUYISELO FANI Appellant

v

REX Respondent

Reasons For Judgment
Filed by the Hon. Judge Mr. Justice M.P.
Mofokeng on the 10th day of April, 1980.

The appeal has already been dismissed for reasons which follow.

The appellant and another (who has not appealed) were charged before the Qacha's Nek Subordinate Court with having contravened the provisions of section 16(I) of the Stock Theft Proclamation, as amended, in that on or about the 1st July, 1979 and at Mpiko's they were found in possession of 25 sheep in regard to which there were reasonable grounds that their acquisition had been unlawful and that the accused were unable to give satisfactory explanation of their possession. To this charge they pleaded not guilty but were found guilty and they were sentenced to 12 and 11 months imprisonment respectively.

The Crown led evidence to the effect that on the 1st day of July, 1979, L/Sgt. Ntsane who was on a stock theft drive, and in the company of other witnesses, on information, went to inspect the flock of sheep at the cattle-post of the appellant. These witnesses all say that on that day the appellant selected amongst other sheep about 24 sheep. He explained, on being questioned, that he and his co-accused with whom he herded, had found the sheep straying at a place called Qolo-Qolo and had then divided the sheep between themselves.

/Appellant

Appellant took nine sheep and earmarked eight for his mother and the ninth for himself. The earmarks of the appellant are as follows :

Right ear : Winkelhaak (front)
 : two $\frac{1}{2}$ moons (behind)

Left ear : Stump
 : Snip (behind)

His mother's earmarks are similar save that the snip on the left ear is on the front. These are the earmarks that the Court found on inspecting the nine sheep. The Court also observed that the other $\frac{1}{2}$ moons on the right ear were fresh and the old one was square as if it had been made with a clip-machine. The appellant's explanation is that he used a knife to make the square $\frac{1}{2}$ moons. A Crown witness who has actually effected such square $\frac{1}{2}$ moons on his sheep was quite adamant that it could not have been made by a knife but a clip-machine.

Appellant in giving evidence stated that the animals with which he was charged belonged to his mother and that he only gave the explanation he did because L/Sgt. Ntsane assaulted him. He further explained that he earmarked his sheep at intervals.

It is quite evident from the evidence that the earmarks (especially the $\frac{1}{2}$ moons) on the sheep the subject of the charge, were not similar to the $\frac{1}{2}$ moons on the sheep left behind at the cattle-post of the appellant. His explanation as to why they were not similar (all sheep being his or his mother's) is far from being satisfactory. (Mokotla Mojaki v. Rex, 1971-73 L.L.R. 53; Makeng Mpesi v. Rex, 1967-70 L.L.R. 112; Mapota Napo v. Rex, 1971-73 L.L.R. 5).

The trial Court, having found that appellant's explanation was untrue and therefore, in the circumstances; unsatisfactory, returned a verdict of guilty of contravening section 16(I) of the Stock Theft Proclamation (as /amended).

amended). I am unable to hold to the contrary.

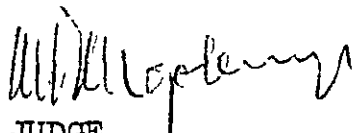
There is^a notice for hearing attached to the record of appeal addressed to the appellant. It reads:

" NOTICE OF HEARING

TAKE NOTICE that your appeal to this Court (i.e. High Court) against your conviction and/or sentence in criminal trial No. 294/79 held at Q/Nek in the QACHA'S NEK district for the offence of STOCK THEFT shall be heard before the High Court at MASERU on the 4th day of April 1980 at 9.30 a.m.

Sgd: _____ "
 REGISTRAR.

It was served on the appellant, at the Central Prison on the 21st February, 1980. Meanwhile, according to the Roll of cases for hearing the same matter was to be heard on the 2nd day of April 1980. The appellant was not aware of this latter date. Since the appeal had been originally setdown for hearing on the 4th day of April 1980 which day was a public holiday, then in terms of section 49(I)(b) of the Interpretation Act No.19 of 1977 it was heard on the 8th day of April 1980 which was the next following day which was not a Sunday or public holiday.



JUDGE.
10th day of April, 1980.

For the Appellant : Mr Jobodwane
For the Respondent : Mr Peete.