

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MAKATA PHOMANE

Appellant

v

R E X

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice F.X. Rooney
on the 13th day of October, 1982.

Mr. G.N. Mofolo for the Appellant
Mr. Kabatsi for the Crown.

On the 3rd August, 1982, the appellant appeared before Mr. T.S. Motinyane, charged with stealing a goat. He pleaded guilty and on conviction was sentenced to 3 months imprisonment. He appealed to this Court against the severity of this sentence.

On the 30th September, 1982, I quashed the conviction and sentence. According to the statement of facts presented to the court by the prosecutor, the complainant's goat went astray in July of this year. On the 29th of that month, the complainant and the police came to the accused's home and inspected his flock. The statement goes on to say :

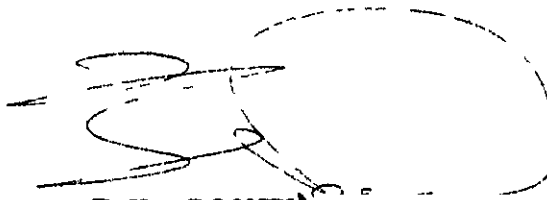
"A goat with different ear-marks was found. It was identified by complainant as his stray goat. Accused was asked to give explanation which he did furnish. He was arrested cautioned and charged."

The prosecutor did not tell the court and the magistrate did not ask him what the explanation was which the appellant gave to the police. For all I know, he may have explained the circumstances in which the goat was found among his flock in a manner

2/inconsistent with

inconsistent with his guilt. It is not enough that an accused pleads guilty. The statement of facts must disclose that he is guilty. No adverse inference can be drawn simply because the missing goat was found among the appellant's flock.

I was unable to accept Mr. Kabatsi's argument that the nature of the crime of theft was so well known that the possibility of mistake on the part of the appellant could be disregarded. There is statutory obligation on a Subordinate Court to hear and record the facts disclosed by the evidence in the prosecutor's possession (Sec. 240 (1)(b) Criminal Procedure and Evidence Act. It has been held in numerous cases that unless the facts establish the existence of an offence, the accused must be acquitted (See Apell v. Rex 1981 (1) LLR 49 and cases cited therein at 51, Rex v. Khalema & Another 1981 (1) LLR 97 and Rex v. Khama 1981 (1) LLR 128)



F.X. ROONEY
JUDGE

13th October, 1982.

Attorney for the Crown : Law Office.