

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

NTHOFEELA KHUBETSOANA

Appellant

v

REX

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice T.S. Cotran
on the 8th day of November
1982

On the 1st November 1982 I allowed the appeal and ordered a retrial before another magistrate. I said I will file my reasons later and these now follow.

~~On the 3rd August 1982 the appellant was charged with~~
stock theft. The particulars of the charge stated that he stole goats. It did not specify how many. The offence is alleged to have taken place on 5th October 1981.

The magistrate noted that the appellant pleaded guilty to receiving stolen property knowing it to be stolen. That of course was not what he was charged with although it is a competent verdict on a charge of theft. The appellant had taken the oath before me in the High Court and said he denied that he stole the goats (which is clear though the magistrate did not record it) but when the magistrate asked if they were found in his possession he said they were. He did not tell him he knew either at the time of receipt or later that they were stolen. This assertion I believe because it is clear from what the appellant told the magistrate in mitigation that his explanation was that the goats were given to him by a certain Seabata. The appellant was unrepresented and one assumes he does not appreciate the niceties of the crime of receiving stolen goods.

Ten months had elapsed between the theft and the finding in possession. The prosecutor's outline of the facts did not indicate what evidence he had to prove guilty knowledge by the appellant. The possession was not recent.

All magistrates should be extremely careful in cases of this nature. The exact words of the accused person ought to be reproduced. From my many years of experience as a magistrate

/unrepresented

unrepresented accused often say "if they (the goods - in this instance the stock) were found in my possession and they were stolen, if the law says I am guilty then I am guilty" but this does not tantamount to a plea of guilty at all.

In short I am not satisfied that the plea was not unequivocal in the circumstances of this case.

The conviction and sentence are set aside. The appellant should be tried before another magistrate, a plea of not guilty should be entered, and the trial should proceed in the normal way.

In the meantime the amount of cash bail paid pending appeal would remain deposited as well as appellant's passport in the Clerk of Court's office in the Leribe Subordinate Court until the retrial is finalised.

CHIEF JUSTICE
8th November, 1982

For Appellant: Adv. G.N.Mofolo

For Respondent: Mr. Peete

cc: The Magistrate, Leribe
O/C Police, "
O/C Prison, "
O/C Maseru Central Prison
D.P.P.
Director of Prisons
All Magistrates & PPs
Public Prosecutor, Leribe