

IN THE HIGH COURT OF LESOTHO

In the matter of :

MALUKE MOKOALO	1st Appellant
MORAPELI MOKOALO	2nd Appellant
TSOTANG MOKOALO	3rd Appellant

V

R E X Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 29th day of November, 1982.

The three appellants, together with another accused, appeared before the Leribe Subordinate Court charged on two counts under the Stock Theft Proclamation. On the first count it was alleged that they had stolen a number of small stock belonging to various persons but under the guard of Molise Maleta. This occurred on the 3rd of October 1980 at Levy's Nek. On the second count it was alleged that during the month of March 1979, at Sehlabeng, they stole thirty (30) sheep, the property or in the lawful possession of Thesele Mafoso. They pleaded not guilty but were all found guilty and sentenced as follows .

"Accused 1 . R50 or 2 months' imprisonment suspended for two years" (on certain conditions).
He has not appealed.

Accused 2, 3 & 4 to serve a sentence of "9 months, 12 months and 12 months respectively no option of a fine."

"Exhibits to owner." These accused have all appealed to this Court against their conviction and sentence."

/They were

They were allowed bail of R50.00 cash.

In this judgment accused 1 will be so referred but accused 2, 3 and 4 will be appellants 1, 2 and 3 respectively.

During the night of the 3rd October 1980 some seven (7) sheep and two goats disappeared from the kraal of one Molise Maleta (PW.2) deposed that his search led him to a place called Sekhutlong - Mohobollo where he identified some of his stolen sheep amongst a flock being loaded by the men he then did not know. It was in the afternoon. The following day he went, with others who had been with him all the time, to find their whereabouts. They found them at the cave of Janefeke (The cave of Janefeke). They returned to call the police.

They arrived very early at sunrise. He, a policeman and a chief's messenger surrounded "the area of the cave." They found a dead goat being eaten by the vultures. They also found some goats on the cliffs. The policeman and the chief's messenger went into the cave.

Sgt. Maleke (PW.10) deposed that he found accused 1 inside the cave. They took out skins which were in the hut. Accused 1, claimed the skins as those of his goats. Smith (PW.5) identified two skins amongst those taken out. Accused 1 had a head of goat next to the fire with one side already burnt. It was that of a young goat. Smith identified it as one of his missing goats. The earmarks, on it were fresh. Accused was asked to prevent the sheep on one side from scattering so that they could be inspected. He ran away. The whole flock was driven away by them. They found goats and sheep hidden in crevices on the cliffs. Phatoli and Molise identified the animals as their missing "property".

In the cliffs they found thirty goats and four sheep.

All the animals were driven to the police station at Pitseng. All the accused were summoned. They came except appellant 3. All the sheep found on the cliffs bore earmarks of his family i.e. appellant 2's children, was his explanation but his brother Lehasa (PW.8) denied flatly what his brother had said. When appellant 2's flock was examined, he said two sheep were Lehasa's property. When the latter was asked he "denied knowledge of them." Accused 1 had said he used the skins found in the hut in the cave for bedding but on examination by an experienced Stock Theft Police Officer and much knowledgeable about such conditions he was of the opinion that those skins were about two days old i.e. after skinning.

Pule (PW.3) is the pound master. He impounded thirty-two (32) goats brought by Phatoli. He remembers slightly, though, their colours and earmarks. Then (appellant 3) arrived and paid the fees. He said he had been looking for them. It was a few days after their disappearance from various places. They were released to him. Phatoli corroborates this evidence. Later, the same month, he was called and saw the same animals but they now bore different ear-marks. They were fresh. Other animals, very distinctive in colour, were conspicuous by their absence. Instead, he was showed their skins

It is clear from the actions of the accused that they acted in concert. Their actions at first were supposed to be sophisticated but turned out to be so clumsy that even a child could see for what they really were. At last they were caught. What does their chief (PW.9) say about these animals before Court? He was called with appellant 1 his subject. The latter said some of the animals belonged to appellant's children. He, the chief knew their ear-marks.

/They were

They were different. But of significance is that all the animals with fresh ear-marks the chief had never seen before. They should have been shown to him and he therefore would have entered them in his book. The fact that the chief and other fellow villagers had never seen these animals in the possession of the appellants is a telling factor coupled with the fact that only a relatively brief period (in fact days) had expired since their disappearance and discovery. (C/F Mojaki v Rex, 1971-73 LLR. 53 at 55C). That they had recently been stolen admits of no doubt.

This appeal, on conviction, has no merit. It is therefore dismissed.

However, there was an element of wanton destruction in this case. Animals were killed or left dying, some as food for the vultures. When a judicial officer sentences a stock thief he must always remember the significant part an animal plays in the life of a mosotho - from birth to death. It is not something of which he ought easily to be unlawfully deprived of and when it happens and the perpetrator is arrested and tried in a Court of law, the later ought to be punished and not let off as it were, to go scot free. We must be very careful lest we encourage the principle of self-help and hence defeat the whole object of our exercise in punishing the guilty. The sentences that have been passed in this instant case are, to say the least, terribly inadequate. They are shockingly too lenient for this type of an offence and renders the relentless war being waged against it useless. This particular case, obviously called for a heavy sentence.

The sentences imposed by the trial Court are hereby set aside and instead the following passed.

/'3 years'

"3 years' imprisonment each."


JUDGE.

23rd November, 1982.

For the Appellants : In Person

For the Respondent : Adv. S. Peete