

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

POLELISO MOLUNGOA

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 9th day of February, 1984.

This appeal is dealt with in terms of the provisions of section 327 of the Criminal Procedure and Evidence Act 1981.

The appellant was charged in the Subordinate Court of first class at Maseru with contravening section 16 of Stock Theft Proclamation 80 of 1921 as amended. He pleaded not guilty but after a very brief trial, he was found guilty and sentenced to serve a period of two (2) years' imprisonment.

The evidence is briefly to the effect that twelve (12) sheep were found in possession of accused's herdboy by the chief. The herdboy deposed that the accused had arrived with the twelve (12) sheep which bore old different marks. He was seeing them for the first time. He and the accused looked after them for a week and then the accused left them in the custody of him (the herdboy). When he was on leave he again helped to look after them.

/After

After a time, ^{he} again left. The chief kept the twelve (12) sheep in his kraal and called the police. The herdboys could hardly give any satisfactory explanation for his possession except to say that they were the property of the accused. When the accused was subsequently arrested after two months he gave an explanation which was unsatisfactory.

In Court accused announced to all and sundry that he had trafficked in dagga in the Republic of South Africa. However, when they were near Marquard they were chased by the police with one David. They escaped and ran into Lesotho. On the way they decided to steal the sheep before Court. This is an explanation of how he came to be in possession of the sheep but it is not a satisfactory explanation. As Jacobs, C.J. said in the case of Mpesi v Rex 1967-70 LLR. 112 at 115.

"Generally one would expect a person to give his account in the first instance to the person who finds him in possession but he may give it in Court for the first time and it is always the Court which must judge whether the account which has been given is a satisfactory one."

The appellant possessed the sheep through his herdboys (Sellane v Rex, CRI/A/157/68). The learned magistrate found the appellant's explanation unsatisfactory. I entirely agree.

The appellant appeals against the conviction on this single ground :

"Section 16 of Stock Theft Proclamation 80 of 1921 was not followed in that there was no proof that

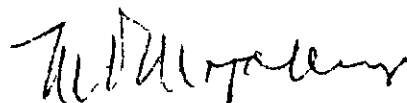
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the appellant was found in possession of the disputed stock nor was there proof that anyone believed that such possession had been obtained unlawfully or that he had in his possession proof that the appellant's possession was unlawful."

It has been clearly shown that the accused was in possession through his herdboy. The herdboy could offer no explanation for his possession except to say he was herding for his master, the accused. The accused has supplied the answer that the sheep were stolen and therefore, his possession could hardly be described as being lawful.

In my view, therefore, the appeal ought to be summarily dismissed and it is so ordered. His appeal deposit is forfeited to the Crown.

The Registrar is requested to inform the appellant about the fate of his outcome.



J U D G E.

9th February, 1984.