

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

KOPANO SETJEO

v

REX

JUDGMENT

Delivered by the Acting Judge Mr. Justice

J.L. KHEOLA ON THE 27th August, 1984

The appellant appeared before the Leribe Subordinate Court charged with contravention of section 16 of the Stock Theft Proclamation No.80 of 1921 as amended, it being alleged that on the 26th day of November, 1983 and at 'Mate in the district of Leribe, the appellant having been found in possession of a cow of which there were reasonable grounds for believing that the appellant obtained unlawfully or that it had been stolen, did unlawfully fail to give a satisfactory explanation of such possession. The appellant pleaded not guilty but he was eventually found guilty and sentenced to fifteen months' imprisonment.

The appeal was originally against both conviction and sentence but at the hearing of this appeal the defence

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abandoned the appeal against sentence. I think Mr. Mofolo for the appellant took the right decision because stock theft is one of the most serious offences in this country where the lives of the majority of the population depend almost entirely on farm animals.

On the 26th November, 1983 Trooper Maselepo, acting on the information he had received, proceeded to the home of the appellant at 'Mate. On arrival there he found that the appellant had slaughtered a brown cow and the whole carcass including the ears and the skin was seen by the police officer. He noticed that the ears had fresh earmarks. He demanded a bewys from the appellant but he was given a "chit" which purported to have been issued by headman Kamoho Motlokoa P.W.3). The earmarks in the chit tallied with the fresh earmarks found on the carcass. Trooper Maselepo became suspicious that the appellant's possession of the carcass was unlawful and demanded an explanation from him. The appellant said that it was his first time to see that the earmarks were fresh. He said he had bought the cow from one Mafosa of ha Seetsa but he later changed his story and said he bought the cow from one Kali Monaheng (P.W.1).

Kali Monaheng gave evidence that he never sold any cow to the appellant. Headman Kamoho Motlokoa testified that the chit before Court was not issued by him but he admitted that it bore his official date stamp. He explained that one night a stranger slept at his place and he accommodated him in the room in which the date stamp was kept. He suspects that the stranger stamped a blank paper /and ...

and later used it as a chit authorizing one Thapelo Fito to sell a brown cow. He further said that he did not have a subject named Thapelo Fito.

The appellant testified that he bought the cow from Kali Monaheng for R340. He paid a deposit of R200 and promised to pay the balance on the following day (25.11.83). It was agreed that P.W.1 would collect the balance at the home of the appellant but he never turned up on the appointed day. On this point the evidence of the appellant is in direct conflict with the evidence of his witness, Khoarai Khoarai (D.W.3) who said that the agreement was that the appellant would send people to the home of P.W. 1 and pay the balance there. The appellant went on to say that on the 26th November, 1983 when the policeman came to him he explained that he bought the cow from Kali Monaheng. Arrangements were made that Semon Lepolesa (D.W.2) and one Lekhotla Sello should be given R140 to go and give it to Kali Monaheng. Simon Lepolesa gave evidence that Kali accepted the money as balance of the price of the cow. The police immediately arrested him when they found the marked notes of money in his possession. The Crown tried to discredit this witness by showing that in a statement made to the police on the 7th December, 1983 he said he was given R80 and that he said he handed only R40 to Kali Monaheng. The witness denied this.

Section 16 of the Stock Theft Proclamation No.80 of 1921 as amended has been interpreted by this Court in several cases. The principles enunciated in those cases are commonplace. The basis upon which an accused person who is found in possession of stock or produce is made liable to give a satisfactory account of his possession of such

/stock ...

stock or produce is:-

- (a) a reasonable belief that he has obtained possession of such stock or produce unlawfully; or
- (b) actual proof that his possession of such stock or produce was in fact unlawful.

It is only after the Crown has proved either (a) or (b) that the onus is cast upon the accused of accounting for his possession. See Mpesi v. Rex 1967-70 L.L.R. 112. It has also been stressed that the belief, based on reasonable grounds, must have existed in the mind of the person who found the accused in possession and such belief must have come into existence while the accused was still in possession.

In the case now under consideration there is no doubt in my mind that the belief which existed in the mind of the policeman when he found the appellant in possession of the carcass of the cow was founded on reasonable grounds. It is common cause that in this country animals are earmarked at tender age before they are weaned. This particular cow was fully grown up but it had fresh earmarks. The policeman had reasonable grounds to believe that the fresh earmarks had been superimposed on old ones in order to make them correspond with the chit the appellant had. The second ground arousing suspicion that the appellant obtained possession of the cow unlawfully could be that a chit is not a prescribed certificate in terms of Section 24 of the Stock Theft Proclamation. A chit is a letter of application written by the Chief of the seller of stock addressed to the bewys writer authorizing the latter to issue a proper certificate for the sale of the animal described in the chit.

/Now the ...

Now the next question is whether the appellant discharged the onus cast upon him by giving a satisfactory account of his possession of the cow. The trial Court held that the appellant had failed to discharge the onus because:-

- (a) the cow had fresh earmarks;
- (b) the appellant had no proper certificate for the cow; and
- (c) there were contradictions in the defence case.

As far as (a) is concerned there is no clear explanation of what is meant by saying the earmarks were fresh. Does it mean that the wounds were still bleeding indicating that they were inserted just before the policeman arrived? Or does it mean that the wounds were already healing with clots of blood indicating that they were marked a few days or weeks before the appellant was found in possession of the carcass of the cow? These questions are important because the appellant saw for the first time when the policeman pointed the ears that they had fresh earmarks. The question is whether this freshness of the earmarks was something so conspicuous that the appellant ought to have seen and merely turned a blind eye to it. The policeman did not go into details in order to give the trial court a good picture of what the earmarks looked like. To say that they were fresh may mean that they were inserted some weeks or months ago making them inconsistent with the age of the cow.

As far as (b) is concerned it has been pointed out that care should be taken not to infer unlawful possession from facts, such as non-possession of a bewys, which do not necessarily give rise to such an inference. See R. v. Phaloane and Another (1960) H.C.T.L.R. 75. In the present case the appellant had a chit which purported to have

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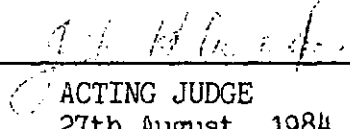
been issued by a lawful authority - the Chief. Mr. Mofolo submitted that as the appellant was not going to keep the cow but wanted to slaughter it at a feast there was no need for him to obtain a bewys. I have heard of that practice but I think it is against the law which requires a bewys for every sale irrespective of whether both the seller and the buyer live in the same village.

The appellant explained to the policeman that he bought the cow from Kali Monaheng but unfortunately the chit did not bear the name of Kali Monaheng as the seller but bore the name of Thapelo Fito. The Crown made no attempt to prove that the appellant was literate, in his evidence he said he did not know how to read and write. See Willie Letlaka v. Regina (1961-62) H.C.T.L.R. 40. The appellant called Khoarai Khoarai (D.W.3) who was present when the sale took place. He also called Simon Lepolesa (D.W.2) who together with Letlaka Sello were used as trap to go to Kali Monaheng and give him the balance of the purchase price. This arrangement was done with full knowledge and blessing of the policeman and Chief Tumahole Selebalo. There is evidence that Kali Monaheng accepted the money and the police subsequently arrested him because this was full proof of the fact that he had sold the cow to the appellant. Although he denied that he sold the cow to the appellant I am of the opinion that there was ample evidence that he sold it. He admitted that on the 24th December, 1983 he met the appellant and Khoarai in the veld while they were driving the cow. In my view the meeting was not a coincidence because on the 26th December, 1983 he accepted a balance of the purchase price of a sale which was negotiated on the 24th December, 1983.

The trial court has described the defence witnesses as "first class liars". With respect, that finding is not based on the evidence
/in the record ...

in the record of proceedings. It is true that there are some discrepancies or contradictions in the evidence of the appellant and D.W.3 but they are so trivial that they have to be ignored and I do not wish to discuss them.

In a case of this kind all that is required is that the accused should give an explanation which may reasonably be true and which, if true, would be a satisfactory account of his possession. He is not expected to satisfy the Court beyond a reasonable doubt that his story is true. I have carefully considered the explanation given by the appellant and I have come to the conclusion that it may reasonably be true. The appeal is therefore allowed and the conviction and sentence are set aside. The appeal fee must be refunded to the appellant.



ACTING JUDGE
27th August, 1984

For the Appellant: Mr. Mofolo

For the Crown: Mr. Seholoholo