CRI/A/25-26/84

IN THE HIGH COURT OF LESOTHO

In the Appeal of

MORAMANG THEJANE	1st Appellant
LEKHOANA MOROPANE	2nd Appellant

v

R E X

REASONS FOR JUDGMENT

Filed by the Hon the Chief Justice, Mr Justice T.S Cotran on the 9th day of May, 1984

The two appellants (together with another person who did not appeal) were charged with dealing in dagga contrary to s.3(a) "read with section (d) of the Dangerous Medicines Act 1973 (Act 21 of 1973). Both appellants pleaded guilty and were sentenced to 18 months imprisonment The dagga (in bags) weighed about 150 kg

Mr Tsotsi argued the appeal on behalf of the appellants on the 16th April 1984 Without calling upon Crown Counsel I dismissed the appeal in toto

The notice of appeal listed two grounds of appeal, one against conviction, and one against sentence, the text of which reads -

"1 The conviction is against the weight of evidence and is not supported thereby

2. The sentence is excessive "

The "heads of argument" (and the oral argument) of Mr. Tsotsi were centred on one or two points It was contended that the

/charge

charge was defective in that the prosecutor in his outline of the facts, told the magistrate that the appellants were transporting dagga (on donkeys) and that that word is not used in the definition of "dealing" in Section 2 of the Act The definition however has the words "performing any act in connection with" (various matters) and that must include transportation. This argument fails.

The second point was concerned with sub-section (d) of s.3 of the Act It is obvious that Paragraphs (a) (b) (c) (d) of s 3 are separate offences but the draftsman, or the printer, instead of inserting "shall be guilty of an offence and liable on conviction" on a separate line after paragraph (d), put it immediately after the words "in paragraph (c)" as if the punishment provided in (i) (ii) (iii) and (iv) only dealt with the offence created by paragraph (d). This is clearly a misprint The words "read with s (d)" were not intended to be a duplication of the charge but a reference to the punishment that a magistrate is empowered to impose on an accused person after conviction. The Act punishes the dealer in a prohibited or habit forming medicine or plant with greater severity than that imposed on the mere possessor. The crucial section in this legislation is provided in s.30 of the Act

I do not think that "read with s.3(d)" was fatal The appellants were not prejudiced and they unequivocally pleaded guilty to the offence of dealing

I cannot see how the Court can interfere with the conviction.

The sentence did not strike me as inordinately severe The appeal, as intimated earlier, was dismissed in toto

CHIEF JUSTICE
9th May 1984

For Appellant Mr. Tsotsi
For Crown Mrs. Bosiu

CRI/A/42/84

IN THE HIGH COURT OF LESOTHO

In the Appeal of

SEKHOBE MOLETSANE Appellant

v

R E X

J U D G M E N T

Delivered by the Hon. the Chief Justice, Mr Justice T S Cotran on the 9th day of May, 1984

The appellant was convicted of stock theft (4 heads of cattle) and sentenced to 18 months imprisonment half of which suspended for 3 years on conditions

The appeal is against conviction

The case for the Crown was to the effect that some time during November 1981 four heads of cattle that were kraaled at the police pound in Mount Moorosi Police Post were stolen According to the police, the cattle, at the time of the theft, were regarded as stray animals The charge against the appellant was that he stole the cattle "the property or in the lawful possession of Lesotho Mounted Police at Mount Moorosi" i.e before the police knew who the owner was

It would seem that the four heads of cattle were found in possession, not of the appellant, but of four other persons, one

/beast

beast with each, a few days after the theft. The appellant was arrested a few days later and kept in the cells, and the four persons in whose possession the beasts were found, were brought to the cells where they identified the appellant as the person from whom they individually bought the head of cattle in his or her possession. The appellant had given a bewys, to each. These were found to be false however

The appellant's defence at the trial was a denial that he sold the beasts to any of the four witnesses who had testified that he was the seller, and this was the only point taken on appeal by Mr. Ramodibedi on behalf of the appellant the argument being that the investigating officer should not have taken the witnesses to the cell where the appellant was kept but should have conducted an "identification parade"

Well it is impossible to circumscribe the instances when an "identification parade" must be held, and when it need not be held. It all depends on the circumstances.

The witness Matsepang (P W.3) testified that she had known the appellant before she bought from him the stolen ox in November 1981. He was driving four heads of cattle at the time. The witness Makhopiso Sehlabo (P W.5) did not know the appellant from before but she was in the company of Matsepang (P W.3) who knew him. Another witness Qakiso (P.W 7) testifies that he knew the appellant when he bought a head of cattle from him and was requested to find buyers for other cattle he had. He knew of a deal that the appellant had struck with some women who were interested in buying cattle These women gave evidence

It should be mentioned that the trial of the appellant was

/delayed

delayed for nearly 20 months, by which time one of the stolen cattle had died However, three were still alive and these were identified by the witnesses and seen by the magistrate

There was in my opinion sufficient evidence to convict the appellant The appeal against conviction (and sentence) is dismissed

CHIEF JUSTICE
9th May 1984

For Appellant Adv Ramodibedi

For Crown Miss Moruthoane