

IN THE HIGH COURT, OF LESOTHO

In the Appeal of :

LEFU MABALEHA

V

R E X

REASONS FOR JUDGMENT

Filed by the Hon. Acting Mr. Justice J.L. Kheola
on the 25th day of June, 1984.

The appellant was charged in the subordinate court at Thaba-Tseka with stock theft; in that on the 17th day of July, 1983 and at or near Makhuleng he wrongfully and unlawfully stole 23 sheep the property or in the lawful possession of Ramathisana Rantletse. The appellant pleaded guilty to receiving stolen property.

I must point out that 'receiving stolen property' is not an offence unless the person receiving the property knows' that it is stolen. It is the duty of a magistrate when an accused person pleads guilty of receiving stolen property to ask him whether at the time he received the goods he knew that they were stolen. This is important because the accused person may have become aware that the property is stolen after his arrest, in which case he would not be guilty of this crime.

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The facts of this case as stated by the public prosecutor are as follows: "Complainant, Ramathisana Rantletse would give evidence that he has some small stock. He lost 23 sheep at Makhuleng, some were "mafisaed" to him. He received information that the sheep were caught at Khohlontso and men who were driving them were arrested. He went to Khohlontso where he identified 17 sheep, accused had already been arrested together with one Tefo Kanetsi. They had bewys in their hands and claimed that they bought the sheep from one Khanno Ntsasa. They took the accused, the sheep and the bewys to the police station for further investigation. The accused repeated the same explanation that they bought the sheep from one Khanno Ntsasa. There were no names of Khanno Ntsasa in the bewys. They said they were not aware of that. The bewys was from a bewys book stolen from the Police at Thaba-Tseka. Investigation shows that Khanno did sell the sheep to the accused and gave them the wrong bewys. The accused was charged together with Khanno because he was careless in receiving the animals without examining the bewys." (My underlining)

The words I have underlined show clearly that the learned magistrate misdirected himself on a point of law. Carelessness or negligence cannot constitute dolus. See R. V. Myers, 1948 (1) S.A. 375 (A.D.) at p. 382. The mental element of this crime is satisfied where though one cannot go so far as say that X believed the goods to be stolen, it is proved that he actually (subjectively)

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suspected them to be stolen and then deliberately abstained from making inquiries in order to avoid the confirmation of his suspicions. See R. v. Markins Motors (Pty) Ltd. and Another, 1959 (3) S.A. 508 A.D. In the present case the appellant was given the wrong bewys and he was undoubtedly careless by not examining the bewys closely in order to make sure that it tallied with the animals he was buying. That is not proof that he knew that the sheep were stolen. Miss Ramafole, counsel for the appellant, submitted that where an accused person pleads guilty to a charge and the prosecutor elects to outline the facts, such facts by the public prosecutor should disclose the offence with which an accused stands charged or could be found guilty. I agree. See Rex v. Khalema and Another 1981 (1) L.L.R. 97. She also argued that the Crown had to prove that the accused is literate.

In his reasons for judgment the learned magistrate says that the accused pleaded guilty to the charge and the Court formed the opinion that he did not want Khanno to give evidence either because he did not buy the sheep from him or because he knew in their conspiracy that Khanno had stolen the sheep. With respect, the learned magistrate was patently in error because the outline of the facts by the public prosecutor disclosed that the appellant had bought the sheep from Khanno and there was nothing to show any conspiracy between Khanno and the appellant. As far as the plea of guilty is concerned I have earlier stated that in our law receiving stolen

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property is not a crime unless one knows that the goods have been stolen. The Crown failed to prove knowledge.

For the reasons stated above the appeal was upheld.
The appeal fee must be refunded to the appellant.

ACTING JUDGE.

25th June, 1984.

For the Appellant : Miss Ramafole

For the Crown : Mr. Seholoholo.