

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

LEOANIKA QHOBELA

Appellant

v

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 20th day of October, 1986.

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The appellant and three other persons appeared before the court of a Resident Magistrate in the district of Leribe and pleaded not guilty to a charge of Stock Theft, it being alleged that during the month of May 1985 and at or near Fourisburg in the Republic of South Africa they unlawfully and intentionally stole nine (9) head of cattle, the property or in the lawful possession of C.J.R. Scheepers and brought them to the district of Leribe in Lesotho where the court had jurisdiction.

At the close of the crown case the appellant's co-accused were acquitted and discharged. The trial then proceeded against only the appellant who was, at the end of the day, found "guilty as charged" and sentenced to two (2) years imprisonment.

It is against both his conviction and sentence that the appellant has appealed to this court on the grounds, inter alia, that the trial court had no jurisdiction, the conviction was against the evidence and the sentence was excessive.

The gist of the evidence was that the complainant managed his father's farm in the district of Fourisburg in

the Republic of South Africa. From 11th May, 1985 he was away from the farm. In June 1985 he, however, received a certain report following which he proceeded to the farm where he found nine (9) of his cattle missing. A report Exhibit A - had already been made to the police notifying them of his loss.

Later on the complainant was called to Leribe police station in Lesotho where he identified two of his missing cattle. He had no difficulty in identifying the cattle as their brand and earmarks were still in tact. He assured the court that the appellant and his co-accused, nor any other person for that matter, had the right to remove the cattle from the farm without his permission.

According to P.W.3, S/Sgt Monku, he received the report Exh. A - and subsequently started his investigations in the course of which he came to a place called KHOABA-lA-eja-bohobe in the area of Pitseng within the district of Leribe, where he found two of the missing cattle. They were claimed by one Khilikana Nkhoe who was subsequently charged with the appellant as No. 3 accused. Khilikana Nkhoe produced two bewyses - Exh B and C - as proof that he had bought the two cattle, one from P.W.2, Ntsane Tebelo, and the other from Masila Masila who was subsequently charged with the appellant as No.1 accused. Both Masila Masila and Ntsane Tebelo lived in the district of Butha-buthe. The bewyses (Exh B and C) purported to have been issued by the appellant also in the district of Butha-Buthe.

P.W.3 then proceeded to the district of Butha-Buthe where he met and questioned Masila Masila and Ntsane Tebelo in connection with the cattle they had allegedly sold to Khilikana Nkhoe. Masila Masila and Ntsane Tebelo denied. Khilikana Nkhoe's allegation that they had sold the cattle of which they had no knowledge whatsoever. That was confirmed by Ntsane Tebelo who testified as P.W.2 before the trial court.

P.W.3 then went to the appellant and confronted him with the bewyses he had allegedly issued for the sale of the two cattle found in the possession of Khilikana Nkhoe.

The appellant conceded to have issued the bewyses of the two cattle and showed P.W.3 the bewys book from which he had issued the bewyses covering the two cattle that had been found in the possession of Khilikana Nkhoe.

On inspecting the bewys book P.W.3 found that the appellant had in fact issued bewyses for nine (9) head of cattle of which four (4) were to be sold by Masila Masila and the rest by P.W.2, Ntsane Tebelo. This was confirmed by the appellant who also gave evidence on oath and told the trial court that at the material time he was the bewys writer in his area. He had issued bewyses covering the two cattle found in the possession of Khilikana Nkhoe and the other seven that had not been found. He knew that the procedure followed when issuing bewyses was that the animals should be brought before him accompanied by a chit in which the description of the animals was made by the chief of their owner. In the present case the animals were brought to him by his co-accused and P.W.2. He, however, issued the bewyses covering those cattle without any chit from the chief. He also used the names of some people who were not present (presumably as witnesses). He told the court that he was in fact changing his plea of "not guilty" to that of "guilty".

There is no doubt from the evidence that complainant's nine (9) head of cattle were taken away from his farm. Whoever took away those cattle did so unlawfully for it was without the permission of the complainant. There was evidence that the cattle were subsequently brought to the appellant who issued bewyses for their sale. From this it can reasonable be inferred that the complainant's cattle were taken away from his farm with the intention of permanently depriving him of those animals. That in my view, constituted the crime of stock theft.

The salient question is whether or not the appellant was the person who committed that crime. There was no direct evidence as to the person who had actually stolen complainant's cattle from Fourisburg in the Republic of South Africa. It would appear, however, that whoever stole those cattle brought them to the appellant with a request that he

should issue bewyses covering them for sale.

In his own words the appellant told the court that he knew that the procedure to be followed when issuing the bewyses was that there should be the chief's chit as proof that the animals belong to the person requesting for their bewyses. He did not only issue the bewyses without the chit but also used as witnesses names of people who were not there.

That being so, I am convinced that appellant was aware that whoever requested him for the bewyses, covering those cattle was stealing them. By issuing the bewyses in the manner he did, the appellant associated himself with the theft of those cattle. In his written judgment the learned Resident Magistrate mentioned that the appellant was accessory after the fact. Theft being a continuing offence, it seems to me that at the time the cattle were brought to him the crime of theft was still continuing and by rendering assistance to the thieves in Butha-Buthe the appellant became a socius criminis and not just accessory after the fact. He could, therefore, be rightly charged either in Butha-Buthe where he joined in the theft of the cattle or in Leribe where the stolen animals were found. The appellant cannot, therefore, be heard to say the court of the Resident Magistrate in Leribe had no jurisdiction to try him for the theft of those animals. The view that I take is that the verdict of "guilty as charged" returned by the trial court cannot be faulted

As regards sentence, it is argued that the trial magistrate did not play an active part to investigate whether or not there were any factors mitigating the severity of punishment. It is to be observed that when he was asked to address the court in mitigation all that the appellant told the magistrate was that he asked for lenience on the basis of his old age and the court was not invited to consider any other personal factors. This the trial magistrate should have considered together with the fact that the appellant was a first offender and had pleaded guilty as a sign of remorse.

5/ Although .....

Although in his written judgment, the trial magistrate does not mention that he considered these factors, it should be remembered that he is a Resident Magistrate with a jurisdiction of 4 years imprisonment. He, however, sentenced the accused to only 2 years imprisonment. In my view if he did not take the above mentioned factors for the benefit of the appellant the trial magistrate would have sentenced the appellant to a more severe sentence. In any event I do not consider a sentence of 2 years imprisonment too excessive for a conviction of Stock Theft. I am not inclined to disturb the sentence.

I would, therefore, dismiss this appeal.

B.K. MOLAI  
JUDGE

20th October, 1986.

For Appellant : Mr. Ramolibeli  
For Respondent : Mr. Lenono.