

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

VS

MABOTHA SOOTHO

J U D G M E N T

Delivered by the honourable Acting Chief Justice Mr.
Justice J.L. Kheola on the 1st day of December, 1986.

The accused appeared before the magistrate of second class powers at Thaba-Tseka subordinate court charged with theft of stock. It being alleged that on the 24th August, 1986 and at or near Methalaneng the accused stole six (6) head of cattle the property or in the lawful possession of Mohobelo Ntutu.

The accused pleaded not guilty to the charge but he was found guilty as charged at the end of the trial. The learned magistrate committed him for sentence by this Court but failed to give any reasons why he found it necessary to do so. Section 293 of the Criminal Procedure and Evidence Act 1981 provides that reasons must be clearly stated why the magistrate finds it necessary to commit an accused person for sentence by the High Court. It is absolutely necessary that reasons should be clearly stated because some magistrates tend to "pass the buck" and turn this Court into a sentencing machine. I shall

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assume that in this case the learned magistrate was of the opinion that a greater punishment ought to be inflicted for this kind of offence than he has the power to inflict.

The evidence by the Crown was to the effect that the six (6) head of cattle went missing on the 6th August 1986. A report was made to the police as well as to the chiefs of the neighbouring villages to be on the look-out for such cattle. On the 1st September, 1986 three men (P.W.2, P.W.3 and P.W.7) saw the accused herding the said beasts in Semenanyana valley. They approached him and demanded some documentary evidence to show that they were his property. He failed to produce any such document. In the course of interrogation the accused admitted that he stole the cattle at Methalaneng and that he was in the company of one Khutliso when he committed the theft.

In cross-examination the witnesses denied that there is a road which passes through Semenanyana Valley and that the accused was walking along such a road when they arrested him. They further denied that at the time they arrested the accused ^{the cattle} were already in the village and not in the said valley. They naturally denied that they assaulted the accused and forced him to admit that he had stolen the said cattle.

At the close of the Crown case the accused elected to remain silent. The trial magistrate considered the evidence before him and came to the conclusion that the accused was guilty as charged. I am also of the opinion that the evidence against the accused is overwhelming and it is most unlikely that the witnesses would keep the animals in question in the village and then go to Semenanyana Valley to arrest any person who happened to pass there.

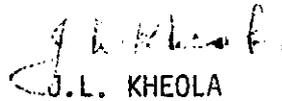
The learned magistrate properly took into consideration the fact that the accused elected to remain silent in the face of a very

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strong prima facie case against him. The evidence against the accused was direct and not circumstantial. "In such a case the failure to testify or the giving of a false alibi - whatever the reason therefor - ipso facto tends to strengthen the direct evidence, since there is not testimony to gainsay it and therefore less occasion or material for doubting it!" per Holmes, J.A. in S. v. Nkombani and another, 1963 (4) S.A. 877 (A.D.) at p. 893G.

I find the accused guilty as charged.

Sentence:- Nine (9) months' imprisonment with effect from the 29th September, 1986.


J.L. KHEOLA
ACTING CHIEF JUSTICE.

29th December, 1986.

For Crown - Mr Thetsane
For Defence - In person.