

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MATIASE LAELA

Appellant

VS

R E X

J U D G M E N T

Delivered by the honourable Acting Chief Justice Mr.
Justice J.L. Kheola on the 12th day of December, 1986.

The appellant was charged with the offence of contravening section 2 (1) of the Importation and Exportation of Livestock and Livestock Products Proclamation No.57 of 1952. It was alleged that on the 10th September, 1986 the appellant unlawfully and intentionally imported into Lesotho a horse without a permit issued by a veterinary officer or by a person designated by him. The appellant pleaded guilty to the charge and was sentenced to a fine of M60-00 or two (2) months' imprisonment suspended for eighteen (18) months but no conditions were stated.

The evidence was to the effect that on the 10th September, 1986 the appellant was found in possession of a brown horse with L.M.2 brand on the left hip and on the left thigh. When he was asked to account for his possession of the horse he produced a document which showed that he

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bought the horse from a farmer in the Republic of South Africa. He had no importation permit required by law. the onus was on the appellant to prove that he had the necessary permit (Section 272 of the Criminal Procedure and Evidence Act 1981).

On the 9th October, 1986 the appellant noted an appeal "against the judgement of the Magistrate for the ditric of Thaba-Tseka delivered on the 8th October, 1986 whereby the appellant was convicted of Stock Theft on the ground that there was no or insufficient evidence on which a reasonable Court could have found the accused guilty as charged."

On the 12th December, 1986 I dismissed the appeal summarily in terms of section 327 of the Criminal Procedure and Evidence Act 1981.

The appellant and his counsel were mistaken if they thought the appellant was found guilty of theft of the horse. The appeal is totally without merits and was summarily dismissed.

However, there is one aspect of the case that has caused me some concern. It is the suspension of the sentence conditionally for eighteen (18) months without stating what those conditions are. A few weeks ago I had a case from Mokhotlong for review. The magistrate had suspended half of the sentence conditionally without stating what the conditions were. I returned the file to him with the order that he must state the conditions and summon the accused to appear before him so that he can be told the conditions. To my greatest surprise it became clear to me that the learned magistrate did not have the slightest idea what I was talking about. The present case is the second one which clearly shows

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that some of our junior magistrates are still not clear what has to be done when a sentence is conditionally suspended.

Section 314 (2) of the Criminal Procedure and Evidence Act 1981 reads as follows:

"Whenever a person is convicted before the High Court or any subordinate court of any offence other than an offence specified in Schedule III, the court may pass sentence, but order that the operation of the whole or any part thereof be suspended for a period not exceeding 3 years, which period of suspension in the absence of any order to the contrary, shall be computed in accordance with sub-sections (3) and (4) respectively, and the order shall be subject to such conditions (whether as to compensation to be made by that person for damage or pecuniary loss, good conduct or otherwise) as the court may specify therein."

Once the court decides to suspend the whole or part of the sentence conditionally, then the conditions must be stated. The condition may be that the accused pays compensation to the complainant within a specified period; it may be that the accused is not convicted of a specified offence or a certain type of offences which have a common element such as dishonesty or violence. I must point out that a suspension on condition that a certain amount of compensation should be paid, must be made only in cases where the issue was well canvassed and the exact amount established during the trial. The accused must have had a good chance to cross-examine the complainant on the issue.

In the present appeal I vary the sentence imposed by the learned magistrate to read as follows:

"M60-00 or two (2) months' imprisonment suspended for eighteen (18) months on condition that during the period of suspension the accused is not convicted of contravening any provisions of Proclamation No. 57 of 1952."

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The magistrate for the district of Thaba-Tseka must explain the sentence to the accused.

J.L. Kheola
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ACTING CHIEF JUSTICE.

5th January, 1987.

For Appellant - Dr. Tsotsi
For Crown -