

IN THE HIGH COURT OF LESOTHO

In the matter of -

R E X

v

SEFOFANE MOHASHOLE

Review Case No 200/86

C R 96/86

Review Order No. 7/86

In Mafeteng District

ORDER ON REVIEW

This case has come before me by way of automatic review

The accused was charged with the offence of stock theft, it being alleged that upon or about the 17th February, 1986 and at or near Wepener in the Republic of South Africa but within two miles radius from Mafeteng district where this court has jurisdiction the accused unlawfully and intentionally steal eleven (11) sheep the property or in the lawful possession of O.H Swanepoel and brought them into Lesotho

The accused pleaded guilty to the charge The public prosecutor gave the outline of the facts as disclosed by the evidence in his possession in terms of section 240 of the Criminal Procedure and Evidence Act 1981 The facts were that on the morning of the 18th February, 1986 the complainant discovered that his eleven (11) sheep were missing On the 21st February, 1986 ten (10) of the missing were found in Lesotho at a spot where they were pointed out by the accused The accused was found guilty as charged and sentenced to three (3) years' imprisonment

I confirm the conviction

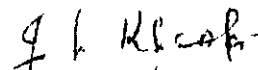
/The. .

The sentence of three (3) years imprisonment for a first offender and for a person who pleaded guilty has given me a sense of shock. This particular magistrate does not seem to care to read the judgments of this Court. It has been pointed out by this Court on several occasions that sentencing an accused person is a matter left entirely in the discretion of the trial court but that discretion must be exercised judicially. Before passing sentence the magistrate must elicit some relevant information showing mitigating factors in favour of the accused person (*Matsepang Matlanane v. Rex*, CRI/A/94/84 (unreported))

In *Mojela v Rex* 1977 L L R. 321 at p 324 Mofokeng, J. emphasised the importance a proper consideration of factors to be taken into consideration when he said,

"Perhaps it is not appreciated that a consideration of what sentence to impose on a convicted person is a procedure which has to be carefully followed. It never follows upon conviction as a matter of course. Different considerations now come into play and these must be carefully weighed both as affecting the person of the accused and the society. It is the duty of the trial court to consider all the relevant factors and not to adopt a passive role"

The learned magistrate had to take into account that ten of the eleven missing sheep were recovered. So that the complainant did not suffer a complete financial loss. I set aside the sentence imposed by the trial court and substitute one of Fifteen (15) months imprisonment

  
J.L. KHEOLA  
J U D G E .

26th-May, -1986

C.C. The Magistrate - Mafeteng  
O/C Police - Mafeteng  
O/C Prison - Mafeteng  
O/C Central Prison - Maseru  
Director of Prisons  
Director of Public Prosecutions  
C.I.D. Police - Headquarters  
All Magistrates  
All Public Prosecutors..