

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

TSELISO LAKENG

v

REX

J U D G M E N T

Delivered by the Honourable Acting Chief Justice  
on the 24th day of June, 1986

---

The appellant was convicted of the offence of contravening section 2(1) of the Importation and Exportation of Livestock and Livestock Products Proclamation No.57 of 1952. The facts were that he imported two goats into Lesotho without a permit issued by the proper authorities. He was sentenced to pay a fine of R30 or 30 days' imprisonment. The learned magistrate made an order which reads thus:

"Accused is given seven (7) days from to-day the period within which to obtain the necessary permit, failing which after the expiry of that period the two goats will be forfeited to the Crown."

The appellant paid the fine. He is appealing against the order on the ground that the learned magistrate erred and misdirected himself in holding that the appellant could obtain a permit whilst the animals are already within Lesotho. He argues that the order is contrary to the provisions of Section

/...

6(2) of Proclamation 57/1952.

I agree that the order is contrary to the provisions of the Proclamation. Section 6(2) reads as follows:

"The Court, shall, when passing sentence, give directions as to the disposal of any livestock or livestock products proved to have been illegally imported into Basutoland by declaring such livestock or livestock products to be forfeited to the Crown or by ordering that such livestock or livestock products be destroyed without compensation to the owner and at his expense: Provided that the Court may, in its discretion order that such forfeiture or destruction shall only take effect if, after the expiration of a specified period, such livestock or livestock products have not been removed from Basutoland."

It is clear that when passing sentence the Court shall order either that the livestock or livestock products be forfeited to the Crown or that they be destroyed at the expense of the accused. There is no provision in the law that the Court can order the accused to obtain a permit within a specified period. As the illegally imported animals were already within Lesotho there was no how the Principal Veterinary Officer could issue a permit for the importation of animals. Even if the Court feels pity for the accused who has illegally imported livestock into Lesotho, it has no power to order that the accused must get a permit while the animals are still within Lesotho.

The proviso to Section 6(2) makes it very clear that if the Court feels pity for the accused, it may order that

/...

the forfeiture or destruction shall only take place if, after a specified period, the livestock has not been removed from Lesotho.

I have already stated earlier in this judgment that the order made by the learned magistrate was not only contrary to the law but could also not be complied with because it was impossible to get a permit for livestock already within the country. It also failed to provide that the illegally imported livestock must be removed from Lesotho within a specified period failing compliance therewith the forfeiture order would become effective.

For the reasons stated above the appeal is allowed.. The order made by the Court below is set aside and replaced with the following order:

"The livestock in question is forfeited to the Crown but the forfeiture shall become effective if within seven (7) days from to-day the livestock shall not have been removed from Lesotho."

J.L. KHEOLA  
ACTING CHIEF JUSTICE

1st July, 1986.

For Appellant - Mr. Mohau  
For Crown - Miss Nku