

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

TSELISO MATHABO BURE CHAO

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 25th day of September, 1989.

The accused appeared before the Subordinate Court, Maseru charged with theft of sixteen goats and nine sheep.

He pleaded guilty and was accordingly convicted as charged.

In a well thought out judgment the learned magistrate pointed out that owing to the long career in stock theft embarked on by the accused from 1969 to date, it is fitting that the accused be committed for sentence to the High Court. Very properly the learned magistrate disregarded the first two previous convictions as they related to offences committed more than ten years before the instant one which was committed in March 1987.

The accused is now aged forty six.

During the period of his wanton enterprise in stock theft he was convicted seven times. Much of the time spanning this period was interspersed with terms of imprisonment which he served. They foot up to twelve years.

/Quite

Quite clearly it seems to me that attempts at reforming the accused are futile and come to nothing. The corollary of this is that the stock owning community are placed in constant fear of being deprived of their hard earned and much valued possessions whenever the accused is out of the prison walls. As long as the accused is at large they can't help being fidgety and anxious. But my view is that they are entitled to peace of body and mind. They deserve some permanent respite from unwarranted and menacing attitude towards possession of their stock.

In R vs Swarts 1953(4) SA. 461 A.D. at B - C the then Chief Justice of South Africa Mr. Justice Centlivres said :

"I do not wish it to be inferred that it (meaning the indeterminate sentence) should never be imposed where an accused has not previously been convicted before the Supreme Court or when he has not previously been warned of the indeterminate sentence. Each case must be decided on its own facts."

I entirely agree with this.

In a case similar to the instant one i.e. Cash M. Dlamini and Another vs The King (unreported and unnumbered) where the decision was delivered by Isaacs J.A. in the Swaziland Court of Appeal; Maisels, P. in agreeing with the main judgment said at p. 4:

"The facts in this present case really speak for themselves. There is no doubt that the appellant has systematically embarked on a course of house-breaking, theft, and robbery. I can almost say that this has been his business; and that business has to stop. I agree entirely that he should be declared a habitual criminal and given the indeterminate sentence."

For my part I am constrained by the unawareness whether sentences are periodically reviewed by any

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authorities in this territory including, as desirable for instance, the Committee for the Prerogative of Mercy among others. Barring my unawareness, it would be fitting to express the hope that, if in fact sentences are periodically reviewed, there should be a regular review of sentences in all cases so that although some convicts may have received indeterminate sentences after being declared habitual criminals their cases may receive reconsideration from time to time.

Because of this constraint the accused may count himself fortunate in that I propose to only warn him that once he has been declared a habitual criminal, the prospects of which are more likely than not, in the highly likely event that he is once more convicted of any criminal offence, he will serve an indeterminate sentence. See sections 302 & 303 of the Criminal Procedure and Evidence Act 1981.

For a man of his habits it does not matter to me that all the stock he had stolen were recovered.

The accused is sentenced to seven years' imprisonment.



J U D G E.

25th September, 1989.

For Crown : Miss Moruthoane  
For Defence : In person.