

IN THE HIGH COURT OF LESOTHO

In the matter between:

NAPO MOEKETSI

v

REX

Before the Honourable the Chief Justice Mr. Justice  
B.P. Cullinan on the 17th day of March, 1989.

For the Crown : Mr. P. Mokhobo, Crown Counsel  
For the Appellant: Mr. N. Lesuthu

JUDGMENT

The appellant was convicted, with a co-accused, by the Subordinate Court for the Mokhotlong district of theft of 23 sheep. He appeals against conviction only.

The complainant testified that 87 sheep were stolen from him. He found 23 of them in the pound at Mokhotlong where the police had placed them, after they had been found in joint possession of the appellant and his co-accused.

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The complainant identified the sheep by the distinctive earmarks used by him. He maintained however that he could identify his sheep even without such earmarks: they stood out from all the other sheep in the pound, as they were Merino sheep, with long wool which was cleaner than the wool of the other sheep.

The appellant maintained that the sheep found in his possession were his property and that the earmarks on them were the earmarks used by him, that is, he had given the sheep to a five-year-old nephew and had given the sheep new distinctive earmarks in his nephew's name: this was done in presence of the Chief's Bugle, he said. The Chief however testified that the new earmarks differed from those contained in his (the Chief's) register for the appellant and that they had not been reported to him by the Bugle. Indeed, he said that the new earmarks should first have been made on one animal in his presence, whereupon such earmarks would also be registered in the Chief's register: this procedure had not been followed, he said. Further, a police officer testified that the appellant was in possession of a register of earmarks used by his co-villagers. It transpired that after the sheep had been seized by the police from him, he added the name of his nephew, erasing it, and then repeating it under a later entry, registering the new earmarks. His sister-

in-law (the mother of his nephew) testified however that the appellant had never given any sheep to her son.

The learned Counsel for the appellant Mr. Lesuthu points to a passage in the judgment where the learned trial Magistrate took judicial notice of a matter apparently within his own personal knowledge, that is, that

"it is true sheep from the lowlands, where the earth is red or light in colour, have a reddish-white wool, whereas those in the mountain area have dark wool."

That of course was a misdirection, as there was no expert evidence as to such before the learned trial Magistrate and the matter could hardly be said to be notorious. Nonetheless there was the complainant's evidence that his sheep were distinctive, as they were Merino sheep, which was not contested: at no stage did the appellant ever refer to the sheep as Merino sheep.

The complainant was quite positive in his identification. In support thereof there is the

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evidence in the nature of successive coincidences, namely the fact that the appellant used new earmarks exactly similar to those used by the complainant, that he chose to do so in respect of a five-year-old nephew, that the normal procedures were not adopted in doing so, that he made an appropriate entry on a register maintained by him after the sheep had been seized by the police. On the issue of credibility the learned trial Magistrate was fully justified in accepting the evidence of the nephew's mother that her son had not been given any sheep by the appellant. In all the circumstances therefore I am satisfied that had the learned trial Magistrate correctly directed himself, he would inevitably have convicted the appellant. The appeal against conviction is therefore dismissed.

Delivered at Maseru this 17th Day of March, 1989.



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B. P. CULLINAN  
CHIEF JUSTICE