CRI/A/3/89

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

NAPO MOEKETSI NTSASA Appellant

V

R E X Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 11th day of August, 1989.

The appellant was convicted on two counts out of three by the Thaba-Tseka Magistrate's Court.

The first count dealt with theft of stock namely three cattle belonging to one Mothinya Sekonyela.

The next count on which he was convicted was count III in the proceedings before the court below. It dealt with contravention by the appellant of section 3(2) (a) read with section 43 of Internal Security (Arms and Ammunition) Act No. 17 of 1966.

The accused had pleaded not guilty on all counts. The trial became a long drawn out ordeal occasioned by lengthy cross-examination of a fishing nature directed at the Crown witnesses.

The appeal is based on the grounds that

1. The trial court failed to consider contradictions in the crown evidence.

2. It also failed to consider the evidence of the defence.

3. The sentence on count 3 was not pronounced in court.

4. The sentence is harsh and shocking.

The simple perspective upon which the events constituting this case are projected is that on count 111 the appellant was in jail serving term which police investigations revealed that he was in unlawful possession of a fire arm.

The interrogation that followed led to the appellant pointing out to them this gun hidden in the roof of a house occupied by him before being committed to jail.

Regard being had to the fact that he was in jail when investigations were in progress it becomes strange how he was able to lead the police to the exact spot where he pointed out the hidden fire arm if one were to take the view that it had been concealed there by someone else.

Nothing therefore substantiates the claim against the learned magistrate's finding on this count. Hence the appeal is dismissed on this count.

On count 1 the argument raised was that the accomplice evidence was to the effect that cattle covered in this count were two whereas complaints referred to three cattle.

But evidence revealed that witnesses who testified knew about this cattle. The appellant had sold them to other people from whom they were seized during the process of investigations.

While the accomplice evidence corroborates that of the other crown witnesses to the extent that it does it should be pointed out that the accomplice evidence instead of being criticised should be found plausible as being more favourable to the appellant than is that of the other Crown Witnesses who refer to more cattle than does the accomplice.

/P.W.3

P.W.3 and P.W.4 testified that the appellant sold the cattle to them. These witnesses know him very well. They said because they were surprised that the names appearing on the bewyses were not the ones they knew to be the appellant's they questioned him about this novelty in his names.

His explanation was that the names they had hitherto known him by were mere nick names. The ones appearing on the bewyses were his actual and proper names.

His claim therefore to the fact that he is illiterate becomes of no consequence because his attention was brought to the new wonder of his instant acquisition of new names concerning which he gave an explanation to those who bought cattle from him. Immediately after his explanation which amounted to a false assurance that nothing was suspect about the stock he was holding out for sale, the transactions were proceeded with.

As submitted by Mr. Thetsane for the crown, I am of the view that this is not a forum wherein to raise the question of portions said to be missing from the record.

There is nothing in the claim that portions are missing from the record to show that miscarriage of justice was incurred due to such, if any, irregularity.

The fact that on this count the accused was sentenced to four years' imprisonment is a proper reflection of how stock theft is frowned upon as an ultimate scourge by stock owners and the inhabitants of this country. It therefore does not evoke in me a sense of shock. The appellant may count himself lucky that the offence was committed before the coming into operation of the 1988 revision of penalties Order which prescribed a minimum penalty that exceeds the

/prison

prison term imposed on him by the court below.

The appeal on this count is also dismissed.

J U D G E.

11th August, 1989.

For Appellant : Mr. Lesutu.
For Crown : Mr. Qhomane.