

CRI/A/50/91

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

KEKELETSO LEMENA

Appellant

v

R E X

Respondent

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi  
on the 14th day of June 1994

It is important to note that when this appeal came up for hearing it was after five years since the conviction and sentence.

It will be observed that the Appellant was convicted on his own plea on this charge of having stolen one horse belonging to one MOLEFI MASIU as the charge does more fully disclose. I agree fully with Mr. Sakoane on behalf of the Respondent in his submissions.

The Appellant having admitted the facts outlined by the

Public Prosecutor went on to add "But I wish to remind the Public Prosecutor that both hind legs were white touched the other had a large white mark." I did not construe this as amounting to a denial of the outline or a way of reneging from his acceptance of the outlined facts. I am satisfied that this admission of facts cannot be minimized. It has significance in that it is a form of a judicial confession in terms of the Criminal Procedure & Evidence Act 1981. (See TSATSANE v REX LLR 1974-1975). In mitigation the Appellant went on to say:- "I am sorry I stole the horse. This is my first offence. I have said this to my own chief also."

I would also observe, in sympathy with the Appellant, that here appeared to have quite an overwhelming amount of evidence against him. This I say considering what one finds furthermore in the Public Prosecutor's outline:- "Accused's chief would say that the earmarks and the brands are Accused's. From there in the company of the Accused and the horse went to his Tsaile cattle post. Once they met the filly ran to its mother and sucked. The filly was still of a sucking age and had not yet weaned". (my underlining)

I would disagree with the learned Counsel for Appellant that all the elements of the offence were not proved. These type of argument has more often than not proved not helpful when an

Accused person has admitted guilt under section 240(b). The effect of such admission by the Accused is a deliberate self denial of an opportunity to put one's case, give evidence and to expose himself to full interrogation on the matter. In the absence of any evidence to negative the Public Prosecutor's outline the Court has to accept and to be satisfied with the outline and return a verdict. Admittedly all the elements of the offence must be disclosed. Indeed there are many advantages to be had in this procedure. It is short and saves time. To some Accused it is a way of showing remorse and contrition. To some Accused it may actually amount to a demonstrated wish to dispense with the services of a lawyer.

As I did indicate in Court when appeal was heard on the 14th June 1994. I would dismiss this appeal.

T. MOWAPATHI  
JUDGE

14th June, 1994

For the Appellant : Mr. S. Malebanye

For the Crown : S. Sakoane