

CRI/A/122/93

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOSHAO RAMABANTA

Appellant

v

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi  
on the 15th day of June, 1994

This is a appeal from the magistrate court of Maseru, in its judgment of the 27th July 1993. The Appellant was sentenced to a term of imprisonment of Four (4) years without an option of a fine. "The Accused had admitted guilt to the following charge, namely; contravention of section 16 of Proclamation 80 of 1921 of Stock Theft in that upon ( or about) the 13th day of July, 1993 and at or near Ha Makere, Thaba-Tseka in the said district, the said Accused did wrongfully and unlawfully and intentionally

steal 9 sheep, the property or in the lawful of Potlaki Majalle".  
I have made an accurate depiction of the charge as shown in the  
charge sheet."

I should, perhaps, find it useful to state the Public  
Prosecutor's outline to highlight some of the queries that Mr.  
Khasipe for the Appellant, raised:

" The Crown evidence would show that on the 15th July, 1993  
the complainant Potlaki Majalle noticed that his nine sheep  
are missing. He reported the matter to the chief and the  
chief issued out messengers to look for the sheep. Whilst  
they were still searching one Pholo Ntaote arrived. On  
arrival he said at chief Toka Mojela's place there seemed  
to be same sheep with fresh ear-marks. The party did go  
there and they found 7 sheep and the Accused before court  
(accused) had been arrested together with his companion.

Before these sheep could go missing the complainant's marks  
were R/E Motabolo L/E Tlhomola. The sheep which were found  
at chief Mojela's place had fresh ear marks which were R/E  
slit L/E fresh winkel hark behind.

They asked for explanation about these sheep from the chief and the chief said they were brought by the Anti-stock-theft people. An explanation was asked for from the Accused who said he slaughtered one sheep and he and friend had eaten it. They said the other one had been eaten by a jackal: The Accused was brought to the Police with the 7 sheep where the accused was warned cautioned and a charge of stock theft preferred against him.

These sheep are before court and I wish to hand them in as an exhibit in this Case.

Court:

All the 7 sheep are temporarily marked Exhibit I.  
The complainant would show that he had not allowed anyone to take his sheep. That is all.

Accused:

I accept the outline of facts as outlined of facts as outlined by the P.P.

Court:

You are found guilty as charged." (my underlining)

Indeed it is not clear as to how the Appellant got into contact with the animals, and when they were found in relation to the Appellant. No where does it seem that they were found in his possession. The Appellant's grounds of appeal were: (a) that there had been insufficient evidence to warrant conviction and (b) that the sentence was too harsh and heavy such as to induce a sense of shock. Mr. Khasipe filed heads of argument which I found very useful.

Mr. Khasipe submitted that if the Accused was charged with section 16 of the Stock Theft Proclamation the Charge Sheet had to allege two most important elements namely:

- (a) That the animals or stock was found in possession the Accused.
- (b) That the Accused was unable to give a satisfactory explanation of such possession.

Mr. Khasipe went on to submit that not only did the charge fail to state that the stock belonged to the said POTLAKI MAJALLE but it did not specifically say so. But this appears to have

been cured in my view by the disclosure in the Public Prosecutor's outline that the said POTLAKI MAJALLE was complainant and that he noticed his 9 sheep to be missing. I would consider this information to have cured the defect in the charge sheet in terms of section 158 of the Criminal Procedure and Evidence Act 1981, that is assuming the charge is not itself defective. Mr. Khasipe went further than that. He submitted that since the charge purported to charge the accused in terms of section 16 of the Stock Theft Proclamation No. 80 of 1921 all the elements of the charge had to be shown in the charge itself, failure of which would render the charge defective and liable to be quashed.

I do not accept the Appellant's submission that the effect of section 4 of Stock Theft Proclamation is to stipulate that there shall no longer be any charge of stock theft under the common law. That can be a charge under common law and an alternative or additional charge as provided for under section 4(2) of the Stock Theft Proclamation as amended is envisaged. This is to be observed in the eminent case of MAPOTA NAPO vs REX LLR 1971-73. and REX v BOIKETLO - MPHALLO & ANO. LLR 1974-75 at 81.

It is correct that a new offence has been created by section 16(1) of the Stock Theft Proclamation namely the Offence of inability to give a satisfactory explanation of possession. The accepted interpretation of the South African Provision similar to our Section 16(1) of the Stock Theft Proclamation is that given by de VILLIERS J (as he then was) in the case of R v MAY 1924 OPD 274 where he stated as follows:

- "(1) An Accused person must actually be found in possession of stock or produce.
- (2) Suspicion founded on reasonable grounds then appearing must exist in the mind of the finder (or possible some class of persons) that the stock or produce has been stolen and
- (3) the reasonable suspicion must come into existence in the mind of either at the time of the finding in possession whether it be the first finding in possession or a subsequent finding or possibly at anytime during the Accused's possession, but not after the Accused has ceased to be in possession. (See

MAPOTA NAPO (above cited))

This Court is faced with the following problems namely:

- (a) Whether it would have been competent to convict for contravention of section 16 of the Stock Theft Proclamation.
- (b) Whether a charge under section 16(1) can be implied.

This depends on whether or not the Accused may not have been fully aware of the fact or element of suspicion being an issue (see R v BALITANE 1956(3) SA 634 EDL, R v ZULU 1951(3) 44 NPD.

It is clear that the charge under section 16(1) would not be sustainable by reason of the absence of the elements elucidated above and that the ownership of the stock seems to have been placed with the said POTLAKI MAJALLE. Indeed it would seem that despite the admission made by the Accused, the evidence seeking to establish his possession of the stock was confused and unsatisfactory. This is so when one observes there were unclear explanations concerning the other sheep and the ones of which the

Accused was convicted. I will not concern myself with the Appellant's Counsel's submission that the explanation amounts to nothing, but inadmissible confession, which ought not to have been allowed. That having been so erroneously allowed the confession should be expunged from the record.

I am persuaded that the Appellant's Counsel is correct in asking this pertinent question which seemed very difficult to answer. What was the Appellant charged with and what was he convicted of? All these problems seem to emanate from the nature of the charge itself. There is no charge in our law of section 16 of Proclamation 80 of 1921 of Stock Theft. This Accused was an illiterate unrepresented man. As quoted in R v TUMELO SESINYI & 10 OTHERS. CRI/T/20/80 Rooney J. (5/03/80) (Unreported) Howirtz J said in R v SEPTEMBER 1954 (1) SA 574 at 575. "A charge should be framed with reasonable clarity and certainty before an accused person is called on to plead thereto. Where as here, the charge is not only uncertain, but meaningless the possibility and even probability of prejudice to an Accused cannot be ruled out." What was the Accused Pleading guilty to? It is the duty of a judicial officer to ensure that a charge in a proper form is put to an Accused (see cases cited in R v TUMELO



SESINYI & 10 OTHERS).

In the result I would allow the appeal and quash the conviction.

T. MONAPATHI  
JUDGE

15th June 1994

For the Appellant : Mr. Khasipe  
For the Crown : Miss N. Nku