

CRI/A/93/91

IN THE HIGH COURT OF LESOTHO

In the matter between:

TIISO LENYORA

APPELLANT

VRS.

R E X

RESPONDENT

JUDGMENT

To be delivered by Mr. Justice G.N. Mofolo, Acting Judge
on the 14th day of August, 1995.

This is an appeal from the Magistrates Court, Butha-Buthe where on his own plea the appellant was convicted and sentenced to eighteen (18) months imprisonment. It is against both the conviction and sentence that Tiiso Lenyora has appealed to this court.

There were two accused persons at the trial when the charge was read to them and both pleaded guilty to the charge of Stock Theft.

The Public Prosecutor having accepted the plea outlined his facts. According to the facts as outlined, it appears that complainant's milk cow was found with accused 2 (appellant) though the cow was already slaughtered by the appellant when found. Appellant's explanation was that he had bought the cow from accused 1 and the latter admitted having sold the same to accused 2 (appellant).

According to chief 'Mou-'Mou under whose jurisdiction the appellant resided, it appears that the appellant produced the cow before chief 'Mou who demanded a bewys and when the appellant failed to produce same the chief told appellant that he (the chief) could not approve of accused 2's (appellant) possession of the cow and despite this warning appellant proceeded to slaughter the cow. Of importance is the fact that accused persons including the appellant admitted facts as outlined by the prosecutor.

The question which now arises is whether it can be said that appellant did not understand the charge as read to him or whether, even if he understood it the learned Magistrate was wrong in convicting him of the charge. There is nothing on record to show that the appellant did not understand the charge as read to him or that the Presiding Judicial Officer convicted the appellant wrongly for in my view:-

- (a) appellant's plea was categoric
- (b) appellant accepted facts as outlined by the Public Prosecutor
- (c) facts as outlined by the Public Prosecutor disclosed the offence charged.

It was submitted on behalf of the appellant that:

- (a) he reported the cow to his chief showing that he had nothing to hide;
- (b) it was not necessary to have had a bewys as the animal was for slaughter;
- (c) appellant had not lied for he was vindicated by accused 1 as to purchase;
- (d) in mitigation appellant had shown that he was guilty of receiving stolen property knowing it to have been stolen for he was not covered by a document.

These submissions were countered by Mr. Sakoane for the Crown by showing that:-

- (a) The chief had in no uncertain terms disapproved of appellant's possession of this animal
- (b) appellant had pleaded guilty to the charge and accepted facts as outlined by the Crown
- (c) appellant's apparent plea of receiving stolen property knowing it to have been stolen came at the wrong time, namely; after the court had returned its verdict and the disclosure could only count perhaps, as a mitigating factor

(d) facts as outlined by Crown disclosed that both accused persons participated in slaughtering the animal and this amounted to common purpose on the part of the two accused persons.

(e) The defence raised by counsel for the appellant are sound but should have been raised by the appellant at a trial in which he had not pleaded guilty.

I entirely agree with the crown that the issues were raised at the wrong time.

The chief had cast doubt on appellant's possession of the cow and in order to remove this doubt appellant should have returned the cow to accused 1 in view of the fact that appellant knew at this stage that all was not well with the cow.

I don't see how appellant could nonchalantly jointly have slaughtered this cow with accused 1 thereby totally ignoring the chief's strictures and remonstrances with regard to this cow unless there was the determination by the appellant to slaughter the cow at all costs.

I have already said that this matter came to me by way of an appeal and the rule as to appeal seems to be that the proceedings are to be in accordance with strict law as was said

by Smith J. in Rex v. Harmer, 1906 T.S. 50 at pp. 56-57 to the effect that:

'It seems to me, however, that there is a distinction between cases on appeal and cases on review. On appeal a prisoner complains of some prejudice which has been done to him by reason of an illegality or informality _____.

In this case no reason has been advanced to show that the appellant was convicted of an illegality or informality and no such reason existed at the trial. On the contrary, there is evidence that the appellant involved himself in activities that were unlawful. Having failed to get clearance of the cow from the chief and participating in the slaughter of the cow with accused 1 who admitted to have stolen the cow and who had failed to give appellant documents covering the cow, appellant associated himself with the crime committed by accused 1.

For there to be common purpose, it appears that there must be a mandate given as accused 1 did by slaughtering the cow with the appellant. It has also been held that:

'the liability of the parties to a common purpose depends on whether the result produced by the perpetrator of the act falls within the mandate _____' - S. v.

Christodoulou, 1967(3) S.A. 269 (N.P.D.). In this case it can be seen that accused 1 had given appellant the mandate to possess the cow unlawfully and ultimately to help him slaughter it even when the chief had refused such permission. In Rex v. Shezi & Or. 1948(2) S.A. 119 (A.D.) Bishops New Criminal Law (Vol.1 para.641 was quoted with authority to the effect that:

'One is responsible for what wrongs flow directly from his corrupt intentions'; and that if 'he sets in motion the physical power of another, he is liable for its result.'

So also in Rex v. Mtembu, 1950(1) S.A. 687 (A.D.) where Bishop's law was also quoted as authority for the proposition that:

'If, while persons are doing what is criminal, another joins them before the crime is completed, he becomes guilty of the whole, because he contributed to the result.'

Appellant's case is worse because according to his plea in mitigation of sentence he told the court a quo:

'I am guilty to have received the said cow knowing it to have been stolen _____'

Although this was an appeal, the Judicial Officer does not seem to have taken the trouble to furnish the court with reasons for conviction and sentence. Irrespective of whether a person is convicted on his own plea, it is necessary to provide an appeal court with reasons for judgment and sentence to enable the court to reach a just decision.

As to sentence though, it has not been shown that the sentence was excessive or that it arouses a sense of shock and I find that it arouses no sense of shock.

In the circumstances of this particular case, I would dismiss the appeal and I have accordingly e so.

G.W. MOPOLD

Acting Judge

28th June, 1995.

For Appellant: Mr. Klaas

For Crown: Mr. Sakoane