

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

TELLO TS'OKOLO

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 3rd day of February, 1995

This is a criminal appeal in which Tello Ts'okolo is appealing against sentence imposed by the learned Magistrate of Class II in 1990. The case involved theft of eight goats which was the property of and in the lawful possession of one 'Maletete Nts'onwane.

It has not been argued that there is irregularity regarding conviction as the appeal relates to sentence only. The Court has heard arguments from both Counsel; and it was contended for the appellant that the learned Magistrate has misdirected herself in law by imposing a sentence of five years' imprisonment when she has no power to impose the same when the crime was committed prior to the 14th July 1988. This ground of appeal has since been resiled from; and properly so because apart from the fact that the record

doesn't show that the Magistrate was acting in pursuance of the minimum penalties order she was entitled in her enhanced jurisdiction insofar as stocktheft is concerned, to impose a maximum of five years' imprisonment. Then what remained to argue on behalf of the appellant was whether the learned Magistrate in imposing this maximum penalty she had exercised her discretion judicially regard being had to the fact that the appellant was the first offender; next that the appellant had restored a good portion of the booty i.e. six sheep out of eight; and had made compensation in respect of the two which were still missing by paying a beast.

I will assume that this beast was received by the complainant because this has been borne out in the evidence by the Crown in the court below and has been also contented by one of the appellant's witnesses and this is on record. True enough as was contented by the Crown the fact that a man is a first offender doesn't necessarily mean that he is going to be treated leniently, and this is the law. There is abundance of authority in that regard.

It was also contented by the Crown that the fact that a man has restored what he has stolen doesn't make him a lesser thief than he in fact is; and one can imagine that this sort of situation arises time and again when there is not much that an accused can do when he is found in an embarrassing situation in which the booty is in his hands and it doesn't belong to him. The only option he has really is to return the property. However, the Court having

listened to both sides felt it not right to treat each of the matters advanced by the Crown individually but to adopt the proper approach which is to look at them globally or collectively.

An important aspect relates to the fact that the learned Magistrate has not stated why she has imposed this rather stiff sentence which (otherwise if she had stated her reasons perhaps) this Court would even if it didn't agree with the sentence she imposed would have found something in the reasons to refrain from interfering. But when no reasons have been supplied the appellate court is at large to try and have a second look at the facts which have not been laid bare. In the circumstances as I have stated because factors have been argued here which clearly show that if taken cumulatively then would reduce the sentence imposed in the court below this Court is obliged therefore to take them onto account. I have proceeded to do so. In the result the sentence of five years' imprisonment is set aside and in its place that of two and half years is imposed.

J U D G E

For Appellant : Mr. Teele
For Respondent: Mr. Ohomane