

IN THE HIGH COURT OF LESOTHO

In the Application of :

THANDAPHANTSI SEPEQANE

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  
26th day of April, 1995

Mr. Sepeqane, your appeal succeeds merely as to the fact that you were convicted under a wrong law. But while you might have been hopeful that such being the case then you are entitled to an acquittal I regret that I should disappoint you.

The proper verdict should have been that you be found guilty with regard to contravention of Section 16 of Stock Theft Proclamation of 1921 as amended and not guilty of theft for theft is not a competent verdict to a charge preferred under the relevant statute. So this Court acting in terms of Section 329(c) of the Criminal Procedure and Evidence is empowered to correct the verdict, or enter a proper verdict and/or correct the judgment of the Subordinate Court which has convicted you of theft when it should have convicted you of contravention of the above-mentioned section.

Regarding sentence it is common ground between counsel that the six years' imprisonment is rather on the high side. While in fact I am prepared to interfere with the sentence I am painfully aware that the fact that you restored to the complainant his stock it didn't benefit him at all because the stock perished within a week of your restoration of it to him.

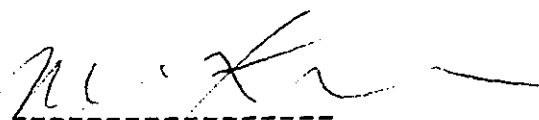
The record shows that you didn't have any previous convictions. So, that stands you in good stead.

I am also taking into account the fact that you have always and dutifully been appearing before court here to prosecute your appeal but because of engagements by the Crown or something along those lines the matter couldn't proceed; and that is not your own fault.

The verdict by the Subordinate Court convicting the appellant of theft is set aside and a proper one of "guilty of contravention of Section 16 of Stock Theft Proclamation 1921" is substituted therefor.

The sentence imposed by the Court below is also set aside and substituted by the following : namely, that the appellant is sentenced to pay a fine of One Thousand Maluti(M1,000-00) or serve four years' imprisonment of which half is suspended for two years on condition that the appellant be not convicted of contravention of any of the provisions of the 1921 Stock Theft Proclamation committed during the period of the

suspension.

A handwritten signature in black ink, appearing to be 'M. X.', written over a horizontal dashed line.

J U D G E

26th April, 1995

For Appellant : Mr. Fosa

For Respondent: Mr. Sakoane