

CRI/A/75/79

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOELETSI TJAMANGILE

Appellant

v

REX

Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. T.S.
Cotran on the 18th day of February
1980

The appellant was charged with importing into Lesotho nine donkeys without a permit issued by a veterinary officer or by any person designated by him contrary to s. 2(1) of the Importation and Exportation of Livestock and Livestock Products Proclamation (No. 57 of 1952 Vol. III Laws of Lesotho p. 2016). He pleaded guilty and was convicted. He was sentenced to pay a fine of M100 or 5 months imprisonment in default. That was on 2nd August 1979. The accused had one previous conviction for a similar offence dated the 29th May 1979 (Criminal Case Quthing 476/1979). In that case he was given a suspended sentence of M60 or 6 months imprisonment in default. He was also given the opportunity to remove the donkeys from Lesotho within 3 months. We do not know if he had complied with the latter order. He probably did.

When his second conviction occurred before the expiry of the period of the suspended sentence the magistrate ordered that sentence to become operative. The result was that the appellant had to pay a total of M160 or in default to go to prison for 11 months. The magistrate is enjoined by s.6 of the same Proclamation to order the stock to be forfeited to the Crown or be destroyed, but has a discretion to give the offender time to remove the stock from the country within a specified period before the forfeiture or destruction order becomes effective.

/The magistrate

The magistrate who dealt with the appellant's first case was apparently the same magistrate who dealt with his second case. Having, in that previous case, given the appellant a chance to re-export the donkeys, in the second case, he was obviously annoyed. He ordered :-

"The nine donkeys(exhibit "1") to be destroyed by the police in the presence of the Clerk of the Court. Carcasses to be sold in public auction, proceeds of which are forfeited to the Crown, without compensation to the accused in terms of section 6(2) of Proclamation 57/52, Volume III Laws of Basutoland 1960".

A Judicial officer should be wise, patient and compassionate. He must certainly be firm, but should not be vindictive and should not let his personal feelings get the better of him. Forfeiture, as has been said in numerous occasions in this Court (see e.g. Morai & 2 Others v. R. - CRI/A/79,80,81/77; Balleng v. R. CRI/A/82/77; Lethethaka v. R. CRI/A/83/77; R. v. Tsitso Review Order 16/78; R. v. Selonyoke, Mosana, Ramoshela, Mohlabane - Review Order 9/78) is a terrible weapon and should not ordinarily be resorted to without giving a chance to the offender to make amends. This appellant may well have deserved forfeiture of his donkeys or some of them but unless there is a cattle disease in the area or serious over-grazing, wanton destruction of stock for no other reason than to teach an offender a lesson is a course a Judicial Officer should not adopt. There was no evidence of a cattle epidemic or overgrazing and the destruction order was inappropriate.

An accused person has a right of appeal against any order (and a fortiori one of forfeiture or destruction) under the provisions of s. 73(1) of the Subordinate Courts Proclamation. What has caused me great concern here is that the right of this appellant was pre-empted and rendered illusory because the nine donkeys were shot dead on the following day. It is difficult to imagine that the magistrate in a small town like Quthing was not aware of this. At any rate there was somebody, be he the magistrate or his clerk or the police, who had acted not only high handedly but also illegally. Exhibits should not usually be destroyed until the period for appeal lapses. The magistrate should know this also his clerk and the police prosecutor. Anyone of them or all of them may well be liable to pay damages in a civil action.

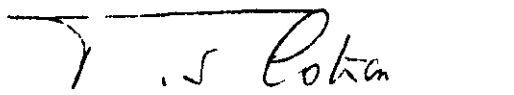
/any order

Any order with regard to the donkeys that I now make will be purely academic. I am afraid I cannot undo what has been done.

I must however show my displeasure positively. I do not think I have power to prevent the suspended sentence on the first case from coming into operation, i.e. appellant must pay M60 or to go to prison for 6 months, but I will set aside the sentence of M100 or 5 months imprisonment in the present appeal and substitute thereof a sentence of one day imprisonment which is deemed to have been completed at the end of the trial. If the fines have been paid, M100 should be returned to the appellant. If he is in prison the authorities should see to it that he is released after serving 6 months less remission for good conduct if he qualifies.

The appeal ^{against sentence} is allowed to the extent I have indicated.

The appeal fees will be refunded to the appellant.



CHIEF JUSTICE
18th February, 1980

For Appellant : Mr. Masoabi)
For Respondent: Mr. Peete) with copies of Judgment

copy to : O/C Prison, Quthing
All Public Prosecutors
All Magistrates