

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

KAHLOLO RAMATSOA HEISI

Review Order No.9/80

C.R. 87/80

Review Case No. 148/80

In Mphahle's Hoek District

ORDER ON REVIEW

The accused appeared before a magistrate at Mphahle's Hoek charged as follows :

" ADJUDICATION WITHOUT AUTHORITY

In that upon or about the month of August, 1978, (actual date to the prosecutor unknown) and at or near Mphahle, in the district of Mphahle's Hoek, the said accused acting unlawfully did exercise judicial powers and for authority within the area of jurisdictions of Mphahle Local and Mphahle Central Courts as duly constituted by law, to wit, by imposing and exacting fines from persons mentioned in the annexure hereto and converted the same to his own use.

1. 'Mamatebele Pakela R6.
2. 'Mamoheng Motomoto R2
3. 'Mats'iu Majorobela R2 and
4. Lefeela Pakela R20."

As the charge made no reference to any statute rendering unlawful the conduct described, the accused was entitled to assume that he was charged with a breach of the Common Law. Acts such as purporting to exercise judicial functions which might have constituted the crimen laesae majestatis in Roman and Roman Dutch Law are no longer indictable under modern usage. (See Hunt's "South African Criminal Law and Procedure" Vol. II 58-59). Inasmuch as the charge as laid disclosed no offence it was bad in law.

The reference in the particulars to the Maqoala Local and the Likueneng Central Courts indicates that what the prosecutor had in mind was Section 21 of the Central and Local Courts Proclamation (62 of 1938) which reads as follows :

"21. Any person who shall exercise or attempt to exercise judicial powers within the area of the jurisdiction of a duly constituted Central or Local Court, except in accordance with the provisions of this Proclamation or any other law in force in the Territory, or who shall sit as a member of such Court without due authority, shall be liable, on conviction before a Subordinate Court of a Resident Magistrate or of the First Class, to a fine not exceeding two hundred rands or, in default of payment, to imprisonment with or without hard labour for a period not exceeding twelve months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment."

The term "judicial powers" must be interpreted within the scope of the Proclamation which provides for the establishment of Courts, the appointment of Court Presidents and other officers, the jurisdiction and powers of such courts and other matters related thereto. It is clear that what the Section 21 forbids is the usurpation by unauthorised persons of the functions and powers of the courts established under the authority of the Proclamation.

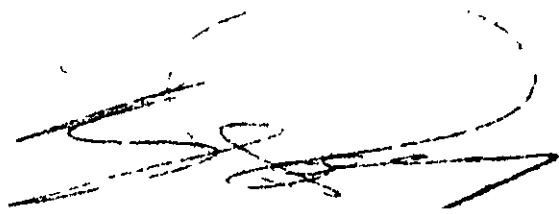
The evidence led at the trial was to the effect that the accused had received monies from persons whose livestock had been impounded as a condition of the release of the animals. It was alleged that he had purported to act as poundmaster at a place which according to one of the complainants was within the area of jurisdiction of the courts named in the charge.

Provision is made in the Laws of Lerotholi for the impounding of livestock in certain circumstances. If it is claimed that actual damage has been caused by the impounded animals an assessment of damage may be made by two independent persons appointed by the Chief or Headman who has established the pound. In the event that a party is dissatisfied with the amount assessed, he may take the matter to court (Law 13 (4)(b)). It appears to me that the system of pounds under Sesotho Law is designed so that an injured party may recover his loss expeditiously without resort to the courts. The remedies are extra-judicial and a Chief, Headman or poundmaster who levies a fine or arranges an assessment of damages by impounded stock is performing an administrative and not a judicial function and is not therefore exercising judicial powers within the meaning of Section 21

of the Proclamation.

If, as was alleged in the present case, the accused unlawfully collected pound fees he may have been guilty of theft by false pretences or some other offences, but, he cannot be brought within the ambit of the Central and Local Courts Proclamation.

For these reasons I set aside the conviction of the accused and the sentence of M70 or 7 months imprisonment in default of payment imposed upon him in the Subordinate Court.



F. X. ROONEY
JUDGE

25th July, 1980.

Copy : The Magistrate, Mohale's Hoek
O/C Police "
O/C Prison, "
CID Police Headquarters
DPP
Director of Prisons
O/C Maseru Central Prison
All Magistrates
All Public Prosecutors.