

IN THE HIGH COURT OF LESOTHO

In the matter of.

R E X

v

LETHALA TEBELO

J U D G M E N T

Delivered by the Hon. Mr Justice Sir Peter Allen
on the 26th day of February, 1988

The accused was convicted on 22 September 1987 by a third class magistrate at Thaba-Tseka of the offence of stock theft. He had pleaded not guilty to the charge of stealing 16 sheep. In view of the seriousness of the offence and the magistrate's limited sentencing power, he committed the accused to this Court for sentencing in accordance with section 293 of the Criminal Procedure and Evidence Act 1981.

However, when this matter came up before me to be dealt with the accused did not appear. Apparently he has not yet been transferred to Maseru Central Prison. Mr Mdhluli appeared for the Crown and indicated that the Crown does not support the conviction in any case, and so he was given leave to address the Court

The magistrate heard the testimony of seven prosecution-witnesses and he then wrote a long judgment.

/However ...

However most of the judgment is merely a recital and repetition of the testimony of those witnesses without any findings as to their credibility.

The case hinges on the identification of a few sheep skins and heads, the number of which varies with the different witnesses. The complainant, Matala (PW1), stated that 16 of his short stock of improved sheep had been reported missing by his shepherd, Molantoa Pitso (PW5). He described four different markings used on his sheep, though he did not explain why he does not use just one type of identifying mark for simplicity.

The shepherd (PW5) stated that he was told by one Lerontl that the accused had taken the sheep. This was hearsay and should not have been admitted as evidence. The same applies to similar testimony given by one Thupeng (PW6).

Moletsane Beile (PW2) stated that the accused was employed by him. He did not say in what capacity and he was not asked. The trial court should always obtain such details if the prosecutor fails to do so. According to Beile the complainant came looking for his sheep and they searched together. They went to the accused's cattle post but the accused was absent. They found some sheepskins inside the post. The complainant said there were four skins and two sheep's heads. Beile said there were three skins and he did not mention any heads.

Another witness Nketsi (PW3), who claimed that he was with these people at the time (though he did not

/say .

say in what capacity), merely stated that they found "the skin and the skulls and meat" without giving any quantities. Yet another witness, Lerontı (PW7) said he too was there and they found "sheep skins and meat", again without specifying quantities

Police Woman Mahao (PW4) stated that she received "skins, legs and skull" but gave no quantities. It appears that she handed in as exhibits only those parts belonging to one sheep, but the trial magistrate did not record exactly of what the exhibit consisted. This should have been done.

Neither the complainant nor any of the prosecution witnesses referred to any possible identification marks on these animal parts. Having told the court what different ear markings the complainant had put on his sheep one would have expected him then to have described what markings he actually found on the two heads allegedly recovered by him at the accused's cattle-post.

Instead of this the complainant made the extraordinary statement that the sheep's heads were given to the dogs. Thus if there were any ears still attached and if they were marked, this was all effectively destroyed by his dogs. This, too, was destruction of vital identification evidence and it is difficult to understand why the complainant should have been so incredibly foolish. If he was not, then the only other conclusion seems to be that the ears were marked differently from his own sheep and he wanted to hide that fact.

The trial magistrate did not consider this point
/at all. ...

at all. Near the end of his judgment he said

In this case the accused is connected with the crime of stock theft by identity. PW1 identified the sheep skins found at accused's cattle-post as his because he says his sheep were improved

In this case Crown called PW1 who identified the skins as his.

..... His evidence is corroborated by that of PW5 who says accused arrived at his cattle-post looking for a goat and its kid.

But it is quite clear that there was no identification and no corroboration. The trial magistrate misdirected himself on these points. At the end of his judgment he said

Accused failed to deny the evidence of all the witnesses except he said the skins were marked which was not truthful. He does not deny that he drove the sheep but he only says that they were his, but he fails to prove this.

Apart from the fact that the accused did in fact deny the evidence of the prosecution witnesses and he is not guilty, it was not for the accused to prove anything at all. He was not required to prove that the sheep were his. It was the duty of the Crown to prove that the sheep, or the parts of them found, were the property of the complainant. If they belonged to anybody else, or if their ownership could not be proved, then the prosecution would have failed to prove this particular charge.

/This, indeed,

This, indeed, was the position in this case. The prosecution had to prove beyond all reasonable doubt that the accused stole the complainant's 16 sheep. I agree with Mr. Mdhluli for the Crown that the prosecution failed to prove this at all. There was some suspicion, possibly even strong suspicion, against the accused, but that is by no means alone sufficient to convict him in court. The standard of proof required by law is very high and the trial magistrate must ensure that he considers the evidence in any case before him with that standard in mind all the time.

Consequently I am unable to proceed to sentence this accused since I find that he was wrongly convicted.

Accordingly, the conviction of stock theft entered by the trial magistrate is quashed and the accused is acquitted and he is to be released from custody forthwith.

P. A. P. J. ALLEN
J U D G E
26 February, 1988

Mr. Mdhluli for the Crown

Accused not produced