

CRI/S/3/88

IN THE HIGH COURT OF LESOTHO

In the Matter of

R E X

v

THABANG RALETEBELE

J U D G M E N T

Delivered by the Hon. Mr. Justice J.L. Kheola
on the 28th day of March, 1988.

The accused was convicted of contravening Section 16(1) of the Stock Theft Proclamation No.80 of 1921 as amended. It being alleged " that on the 17th day of October, 1986 and at or near ha Makunyapane in the district of Thaba-Tseka, the said accused did wrongfully and unlawfully and there being reasonable grounds of suspicion that the said accused possessed stock unlawfully did possess 2 horses and 2 cows and failed to give a satisfactory account for such possession and did commit the offence as aforesaid". The trial court committed the accused for sentence by the High Court in terms of Section 293 of the Criminal Procedure and Evidence Act 1981.

On the 22nd March, 1988 when the matter was called Mr. Thetsane, counsel for the Crown, indicated that the Crown did not support conviction on the ground that when the aforesaid animals were found by the police the

2/ accused had

accused had already sold them to other people and was not found in possession in terms of the relevant statute.

The facts of the case were that on the 17th October, 1986 the chief of the accused saw him arrive in the village having in his possession two cattle and two horses. The chief expected that the accused would bring those animals before him for inspection and for an explanation of how he had acquired them. The accused would have to produce a proper certificate if he had bought them. When the chief realised that the accused was not bringing the animals for inspection, he began to suspect that the accused must have stolen them. He went to accused's home but found that he had already left with the animals. The matter was reported to the police who started their investigations immediately.

The police were very lucky in their investigations because about a week after the matter was reported to them they recovered all the aforesaid animals. The accused had used forged bewys and had sold the animals to various people who innocently accepted the bewys as proper documents.

It is not clear why the public prosecutor decided to charge the accused under Section 16 of the Stock Theft Proclamation 1921 because the evidence before him showed that at the time of his arrest the accused was no longer in possession of the animals. The basis upon which an accused person found in possession of stock is

3/ made liable

made liable to give a satisfactory account of his possession, is

- (a) A reasonable belief that he has obtained possession of such stock unlawfully.
- (b) Or actual proof that his possession was in fact unlawful, and it is only after the Crown has proved either (a) or (b) that the onus is cast upon the accused of accounting for his possession (Mekeng Mpesi v. Rex, 1967.70 L.L.R. 112).

The crown had abundant evidence of theft because there were complainants whose animals went missing under circumstances which showed that they had been stolen. Immediately after their disappearance they were seen by the chief of the accused being driven by him (accused). A few days later the accused sold them to various people using forged bewys. It seems to me that a charge of theft would have been easily proved against the accused.

A charge under Section 16 of the Stock Theft Proclamation requires that 'the suspicion that the stock is stolen must be formed, in the mind of some person, substantially contemporaneously with a finding of the accused in possession of them' (S. v. Khumalo, 1964 (1) S.A. 498 (N) at p. 499).

I wish to emphasise that the public prosecutor can only charge an accused person under section 16 in those cases where there is no evidence of theft, i.e. where there is no complainant whereas the animals were found in the possession of the accused and he is unable to give a satisfactory account of his possession of the

4/ stock.

stock. In the present case there was evidence amounting to or indicating theft and there was no reason why he was charged under Section 16 of Stock Theft Proclamation 1921, as amended.

For the reasons stated above the conviction is quashed. The accused is found not guilty and is discharged.

J. L. KHEOLA.
JUDGE

28th March, 1988.

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| For Crown | Mr. Thetsane |
| For Respondent | In person. |