

IN THE COURT OF APPEAL OF BOTSWANA

Court of Appeal CA 3/84

High Court CA 223/83

In the matter of:

NPSHEKI MAOLOGANE

Appellant

vs.

THE STATE

RULING BY SINGLE JUDGE OF APPEAL

O'BRIEN QUINN, CJ:

I have considered the application for leave to appeal put forward by the above-named appellant who, having been convicted and sentenced by the Senior Magistrate at Molepolole of Stealing Stock, appealed to the High Court and, on his appeal having been dismissed by the High Court was, on application to the Judge of trial, refused leave to appeal.

The evidence against the appellant, which was accepted by the trial Magistrate, was that certain cattle were found to be missing, that the person in charge, SAMETSI NGATSWANA, traced the cattle to the place of a certain DITEKO MOSWETE, who had just been told by a person who had been originally charged with the appellant that the cattle which he was then driving were his and which person, upon the arrival of Sametsi hurriedly left the place, and upon the arrival of the

appellant at the place of Diteko, the appellant was heard by Diteko and Sametsi to be calling for the person who had left and, upon the appellant having been asked by Diteko and Sametsi if the cattle which had been left were his, said that they were, whereupon after further questioning which only served to strengthen the statement by the appellant that he claimed ownership of the cattle, he was seized and tied up by Diteko and Sametsi and later handed to the Police.

The Senior Magistrate chose to believe Diteko and Sametsi and found that the appellant had a case to answer. In his defence the appellant, in an unsworn statement, denied that he was found near the cattle in question and said that, on being questioned by Diteko and Sametsi, had denied that he knew the cattle and had said that he had been merely passing to Kumakwane Village. As regards his having been tied up he stated in written argument that it was merely on suspicion.

In a careful judgment the Senior Magistrate found this appellant and his co-accused guilty as charged and, on appeal, the appellant's co-accused was successful on the ground that it would be unsafe to uphold his conviction as, while the trial Magistrate had dealt with that accused's credibility, he had not directed his mind to the question of identification which had not been tested by an Identification Parade.

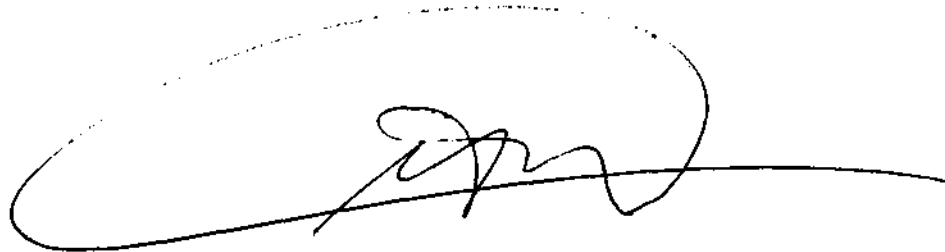
With regard to this appellant, the question of identification does not arise as he was seized and handed to the Police and, on credibility, the evidence of Diteko and

Sametsi was accepted and was not shown to be biased or inconsistent.

After careful consideration, I can find no reason to disagree with the findings of the trial Magistrate nor with the reasoning of the Judge in the High Court and I consider that an appeal to the full Court of Appeal would not be successful.

I, therefore, without hearing the appellant, refuse leave to appeal to the full Court of Appeal.

GIVEN at the Court of Appeal, at Lobatse, this 6th day of February, 1984.

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

J. A. O'BRIEN QUINN
Chief Justice
Justice of Appeal