

IN THE COURT OF APPEAL OF BOTSWANA

Criminal Appeal No. 7 of 1988

In the matter between:

NTELASELO BULA

and

THE STATE

Appellant in Person

Mr. O. Marata for the Respondent

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J U D G M E N T

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AMISSAH, JP  
AGUDA, JA  
BIZOS, JA

AGUDA, JA.

When this appeal came before us on June 29, 1988 we dismissed it after hearing the appellant in person. We now give our reasons for so doing.

The appellant and another person, Sekwate Bula, were charged before a Magistrate's Court at Mochudi for stealing one bullock the property of one Shaw Koko. They pleaded not guilty. After a trial at which the prosecutor called four witnesses and the two

accused persons gave evidence in their defence, the other person Sekwate Bula, was discharged and acquitted. The first accused now the appellant thereafter filed an appeal to the High Court out of time. The appeal was by leave heard by Barrington-Jones, J. on March 2, 1988. After hearing the appellant, the learned Judge dismissed the appeal summarily but subsequently on April 28, 1988 granted the appellant leave to appeal to this Court. The only reason given by the learned Judge for granting leave was that although on the charge sheet the ownership of the bullock was put in Shaw Koko, the evidence given by three prosecution witnesses including Shaw Koko himself was that the beast was the property of someone else by the name of Kwateme.

The first point to be made in this case is that the trial Magistrate disbelieved the appellant when he laid claim to the ownership of the beast in question, and indeed held that he stole it. Those findings were not faulted by the learned Judge on appeal, and we have no reasons to disagree with them.

Now as to the ownership of the beast the evidence believed by the trial Magistrate and which remained unchallenged by the learned Judge on appeal, is simple and it is this. Shaw Koko, deposed as follows in part on examination-in-chief:

"I own the cattle ... The beast belongs to Kwatame ... The nala ox was born in my kraal ... Kwatame is the owner of the beast. He does not know the beast. I claim it since I reported it ....."

Under cross-examination, he told the Court:

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"The beast strayed a long time back ... I still have the mother. I earmarked the nala ox ... When I earmarked the beast I used the owner's earmark ....."

"I say beast belongs to Kwatame. It was born in my kraal..... I know the beast. It stays with me. The owner does not know it. I can testify in absence of owner because it stays in my kraal".

PW2, one Keremang Dickson deposed as follows:

"The beast was born in our kraal. We share the same kraal with PW1.... I have known this beast ever since it was born".

Under cross-examination the witness admitted that the beast was Kwatame's. According to PW3, one Dintwe Chimane, who lives in the same kraal, he had known the beast for a long time. "The beast's mother is still present ..... The beast is PW1's because it has gone for matisa. The real owner is Kwatame".

Under cross-examination the witness told the Court as follows:

"Beast is PW1's. No second owner. I know it to be PW1's. I milked its mother. It went missing in June. It was alone. It grew up in my hands. I knew its mother I know its younger ones".

It is clear from the evidence as herein set down that whilst Kwatame was indeed the owner of the beast, Shaw Koko was lawfully in possession of the beast. Indeed Shaw Koko was in lawful possession of the mother of the beast in question, and the mother gave birth to it whilst in such possession. Therefore there can be no doubt that property in the beast was at the material time vested in both Shaw Koko and Kwatame.

At this juncture it is pertinent to make reference to

Section 130(c)(i) of the Criminal Procedure and Evidence Act,  
Cap 08:02, which says that -

"the description of property in an indictment or summons shall be in ordinary language and such as to indicate with reasonable clearness the property referred to and if the property is so described, it shall not be necessary .... to name the person to whom the property belongs or the value of the property".

It is clear from this provision that it was not in the first place necessary to have mentioned the name of Shaw Koko in the charge. But the charge having mentioned Shaw Koko as the owner the onus then lay on the prosecution to prove that Shaw Koko was either the general owner or the special owner of the beast.

It is abundantly clear from the evidence as set down above, that whilst Kwatame was the general owner Shaw Koko was the special owner.

Section 269 of the Penal Code under which the appellant was charged says that -

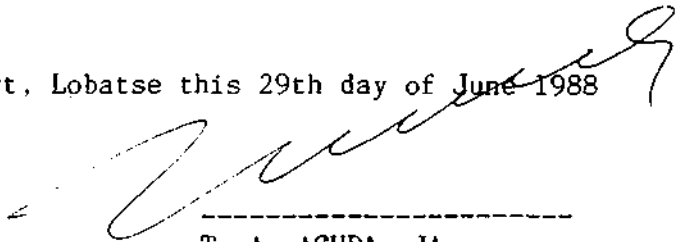
"(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with .....

(a) an intent permanently to deprive the  
general or special owner of the thing of it,  
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and "special owner" includes any person who has any charge or lien upon the thing in question, or any right arising from or dependent upon holding possession of the thing in question".

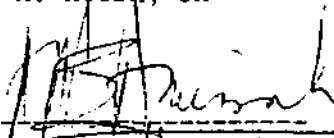
Clearly therefore no error was committed by putting the ownership of the beast in question in Shaw Koko who was in charge of the animal when it was stolen by the appellant. I can therefore see nothing wrong in the conviction of the appellant as charged, and it was for this reason that we dismissed the appeal.

GIVEN at the High Court, Lobatse this 29th day of June 1988




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T. A. AGUDA, JA

I agree

  
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A. N. E. AMISSAH, JP

I agree

  
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G. BIZOS, JA