

IN THE COURT OF APPEAL OF BOTSWANA

Criminal Appeal No. 52 of 1994
High Court C. App. No. F 45 of 1994

In the matter of:

JOSEPHAT HENGUVA Applicant

vs.

THE STATE Respondent

Applicant in person
L. T. Mothusi for the Respondent

R U L I N G

Coram: T. A. Aguda, J.A.:
W. L. K. Cowie, J.A.:

COWIE, J.A.:

This is an application for leave to appeal against conviction and sentence on one count of stealing stock contrary to Section 271 as read with Section 274 of the Penal Code (Cap 08:01).

The Applicant was originally convicted of six counts involving theft and unlawful possession of stock which was suspected of being stolen, but he appealed against those convictions to the High Court and three of them were quashed. That left two convictions standing, but the Applicant only seeks leave to appeal against one of them as already mentioned.

In respect of that conviction, he was sentenced to 6 years' imprisonment. Of this 2 years were suspended for 3 years on condition that he was not convicted of any offence of which theft was an element within that period. The Applicant also seeks leave to appeal against that sentence.

The Applicant appeared before this Court in person and on

the question of conviction he maintained that his appeal had reasonable prospects of success because of the contradictions and inconsistencies in the prosecution evidence relating to the identification of the stock which, it was alleged, had been stolen.

It is true that there were some contradictions and inconsistencies in the evidence of the alleged owner of the stock and his uncle, and had there been no other evidence of identification it might reasonably have been argued on the full appeal, that this conviction was unsafe, but that is not the position.

The prosecution called two herd-boys who positively identified the stock as belonging to their master, the alleged owner.

The Magistrate believed and accepted the evidence of these two prosecution witnesses and explains why he did so. Accordingly even without the evidence of the alleged owner and his uncle there was sufficient evidence that the stock in the possession of the Applicant was stolen.

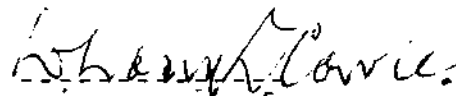
In these circumstances, we are of the opinion, that this appeal against conviction has no reasonable prospects of success and the application is refused.

As regards sentence, the Applicant argued that the Magistrate had not taken into account the fact that the Applicant had spent two months in custody before being released on bail, and that he has reasonable prospects of persuading the Appeal Court that his 6 year sentence should be reduced by two months.

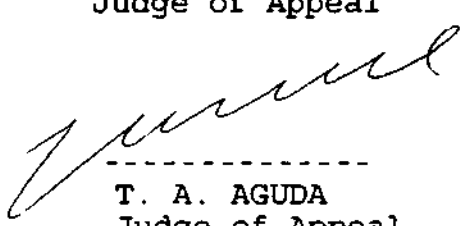
We do not agree. This was a serious offence and even though

the Applicant spent two months in custody before he was sentenced, we are satisfied that the Appeal Court would not interfere with that sentence and accordingly the application for leave to appeal on this matter is also refused.

GIVEN AT LOBATSE THIS 17th DAY OF JANUARY, 1995.


W. L. K. COWIE
Judge of Appeal

I agree



T. A. AGUDA
Judge of Appeal