

IN THE COURT OF APPEAL OF BOTSWANA HELD AT LOBATSE

CRIMINAL APPLICATION NO. 14/95
HIGH COURT CRIMINAL APPEAL NO. 55/94

In the matter between:

TSELAPEDI MOOKETSI

Applicant

and

THE STATE

Respondent

The Applicant in Person

Ms. Attorney K.P. Kupe for the Respondent

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R U L I N G
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AGUDA JA:

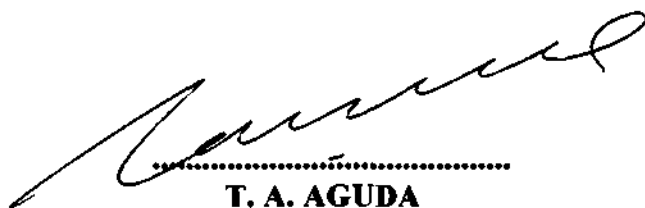
The Applicant was arraigned before a Magistrate on a simple charge of stock theft. The animals alleged to have been stolen by the Applicant between September and October 1993 were five all of which were described on the charge sheet. They were alleged to belong to one Abraham Moagi. After a trial at which the prosecution called five witnesses and the Applicant alleged three witnesses, the Applicant was convicted and sentenced to five years imprisonment, two of which were suspended for three years. He thereafter appealed to the High Court where his appeal was dismissed summarily by Gyeke-Dako J. He has now sought leave to appeal to this Court.

The grounds of appeal filed are entirely on facts. The applicant was charged with the theft of five cattle but convicted of the theft of only three of them. The three beasts the theft of which the applicant was convicted were put in evidence and admitted as Exhibits P3 P4 and P5.

It was common cause that Exhibit P3 was the mother of the other two animals. Accordingly to the complainant the three beasts were among the 15 animals which were missing from the complainants herd sometimes in September 1993. As it turned out, the main question was whether the prosecution proved beyond reasonable doubt that P3, P4 and P5 belonged to the complainant; and this in turn depended upon the identification of the animals. The evidence disclosed that when P3 disappeared it had on it O K2 brand mark. When it was inspected outside the Court during the trial it had fresh brand mark DNB, but the Magistrate was able to see K superimposed with DNB, the applicants' brand mark. As I have stated it is common cause that both P4 and P5 are off-springs of P3. P4 had no brand marks when missing being a young calf, but when it was found it had fresh brand mark of the appellant. Similarly when recovered P5 had fresh brand mark of the appellant, apparently superimposed on another. Having carefully considered all these facts and the evidence of defence witnesses the trial magistrate had no hesitation in finding on the evidence that the claim of the complainant to the ownership of the animals was established beyond any reasonable doubt. I have seen no reason whatsoever to hold that the Magistrate was in error in this finding.

For the reasons herein given, I find no merit in the application for leave, and leave is therefore refused.

DELIVERED IN OPEN COURT THIS^{5th} DAY OF JULY, 1995.



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T. A. AGUDA
JUDGE OF COURT OF APPEAL