



IN THE NORTH WEST HIGH COURT
(MAFIKENG)

CASE NO.: CA33/11

In the matter between:

TSHENOLO EDWIN SEABEA
MACK POLOKO BAREKI

1ST APPELLANT
2ND APPELLANT

and

THE STATE

RESPONDENT

CRIMINAL APPEAL

HENDRICKS J AND RAMAGAGA AJ

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| DATE OF HEARING | : | 18 NOVEMBER 2011 |
| DATE OF JUDGMENT | : | 01 DECEMBER 2011 |

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| FOR THE APPELLANT | : | ADV NKHAHLE |
| FOR THE RESPONDENT | : | ADV MOROKA |

JUDGEMENT

RAMAGAGA AJ:

- [1] This is an appeal against the sentence imposed by the Magistrate of the Regional Division of Ganyesa. The appellants were represented throughout the trial.
- [2] The appellants appeared in the Regional Court at Ganeysa on a charge of theft of stock to the value of R30 000.00 in contravention of the Stock Theft Act 57 of 1959 as amended. They pleaded not guilty.
- [3] They were convicted as charged. The first appellant, a repeat offender was sentenced to ten (10) years imprisonment while the second appellant, a first offender was sentenced to seven (7) years imprisonment on the 20th of November 2008.
- [4] The appellants successfully applied for leave to appeal against sentence, however their application for leave to appeal the conviction was dismissed.
- [5] On behalf of both appellants, Mr Kgatle contends that the sentences imposed are excessively long and induce a sense of shock and warrant interference by this Court.
- [6] On the other hand, Ms Moroka, counsel of the respondent resists any interference with the sentence imposed upon the first appellant and concedes to an extent, albeit not to the same extent as the second appellant's counsel, that there is

merit in the argument for the reduction of the second appellant's sentence.

[7] I now turn to record the necessary factual background for consideration of the arguments advanced by counsel.

[8] On the morning of 7 November 2005 Mr Ian Gordon Brown (Brown) came across the two appellants driving a herd of cattle in the vicinity of his farm. He became suspicious and asked the appellants as to whose cattle they were. The appellants told him that they belonged to one Abraham Bees. Brown recognized the cattle as the ones belonging to the complainant since he had recently bought cattle from him. He was able to identify the cattle through their ear mark. He phoned the police and the complainant, further, he took the cattle to his kraal and went with the appellants to his house to remain there until the complainant and the police arrived.

[9] The complainant went to Brown's farm and identified ten of those cattle as his. He had dekraaled about twelve head of cattle the previous day and only two had come back.

[10] I now turn to deal with the sentencing proceedings.

[11] The first appellant was 28 years at the time of sentencing. This offence was committed in 2005 which means that he was about 25 years at the time of committing this offence,

he was relatively young. He has a minor child aged 6 years. The appellant was employed as a hand lender to a builder. He stated that he too was responsible for the maintenance of his children.

The appellant had four previous convictions of offences involving dishonesty committed between 2001 and February 2005. In all those cases he was sentenced to effective imprisonment term except for the first sentence of 2001 which was partly suspended.

[12] The second appellant had no previous convictions. He was 30 years old when the sentence was imposed. He had two children aged 2 years and 4 years old. He was employed at a garage as a mechanic. He contributed towards the maintenance of his two minor children.

[13] It is common cause that the complainant has not suffered any loss since he has recovered all the cattle. The appellants did not benefit from the offence.

[14] There is no doubt that stock theft is a serious offence and that the seriousness thereof is aggravated by the fact that it is almost impossible to trace and recover stock once it has left the owner's possession e.g. by leaving the grazing camp or kraal.

- [15] There is also no doubt that the dictates of justice demand that the first appellant not be treated the same as the second appellant in sentencing.
- [16] I do not know as to why if the appellants were arrested in 2005 at Brown's place, the trial only took place in 2008 under the 2008 case number. I will thus not venture to speculate whether the appellants were held in custody for some period prior to trial or not.
- [17] It is trite law that in sentencing a balance must be struck between all the factors that have a bearing on sentence. Even in the face of a string of convictions in respect of offences involving dishonesty, it is my view that the sentence imposed on the first appellant is excessively long and induces a sense of shock and thus warrants interference by this Court. It is my considered view that a suitable sentence in respect of the first appellant should be effective 4 (four) years imprisonment
- [18] It is common cause between counsels for the appellants and the respondent that the sentence imposed on the second appellant warrants interference by this Court. I agree with both counsels and form a view that a suitable sentence would be 2 (two) years imprisonment half of which is suspended conditionally for 5 (five) years.

[19] Accordingly I propose that the following be ordered:

“That the sentence of ten (10) years imprisonment imposed on the 20th November 2008 in respect of the first appellant be set aside and replaced by a sentence of 4 (four) years imprisonment.

That the sentence of seven (7) years imprisonment imposed on the 20th November 2008 in respect of the second appellant be set aside and replaced by a sentence of two (2) years imprisonment half of which is suspended for five (5) years on condition that the appellant is not convicted of stock theft or attempted stock theft committed during the period of suspension.

The aforesaid sentences imposed by this Court are effective from the 20th November 2008.”

M J RAMAGAGA

ACTING JUDGE OF THE HIGH COURT

I concur and it is so ordered.

R D HENDRICKS

JUDGE OF THE HIGH COURT

ATTORNEYS:

FOR THE APPELLANT:

MAFIKENG JUSTICE CENTRE

FOR THE RESPONDENT:

STATE ATTORNEY