

IN THE HIGH COURT OF SWAZILAND

Review for Argument No.1/85

In the matter of

REGINA

vs

BHAYILONI JOHN DLAMINI

AND 2 OTHERS

CORAM: HANNAH, C.J.

FOR THE CROWN : MR M. MAMBA

FOR THE DEFENCE: IN PERSON

JUDGMENT

(5/12/85)

Hannah, C.J.

On the 25th October, 1985, these three accused appeared before a magistrate sitting at Manzini and pleaded guilty to the theft of a cow valued at E300 contrary to Section 3 as read with section 18 of the Stock Theft Act 1982. After hearing evidence the learned magistrate convicted the accused and, having been given their antecedent history, sentenced each of them to a fine of E1,000 or five years imprisonment in default of payment.

In the light of the pleas tendered, and the evidence led, I am satisfied that the accused were properly convicted and I confirm the convictions. However, upon reading the record, which was submitted for review, I took the view that the sentence imposed on each accused should be reviewed by this Court, and, accordingly, the accused were called upon to appear before this Court to show cause why the sentence should not be increased.

2

There can be no doubt that the learned magistrate was empowered to pass the sentence imposed. A person who is found guilty of an offence contrary to section 3 of the Stock Theft Act is liable to a fine of E2,000 or to imprisonment for a period of ten years or to both. And a magistrate's court of the first class is specifically given the power to impose such sentence (see section 19 of the Act). However, having perused the record, including the list of the accuseds' previous convictions, and having listened to what the accused have had to say today. I do not consider that a fine with the option of imprisonment was in the least appropriate.

The first accused is in his fifties and has a formidable record of previous convictions. He has been convicted on twenty two previous occasions and of these convictions sixteen are for offences of dishonesty including four for stock theft. His three most recent convictions are a conviction for the theft of fowls in 1979 when he was fined E60, a conviction in February 1982 for stock theft when he was sentenced to four years imprisonment and a conviction in May 1982, again for stock theft, when he was fined E100 or twelve months imprisonment in default.

The second accused is aged twenty two years and he has five previous convictions, all for offences of

dishonesty. His most recent convictions were a conviction in 1980 for housebreaking and theft when he was sentenced to a fine of E10, a conviction in 1981 for theft of a fowl when he was fined E100 and a conviction in November, 1984 for stock theft when he was again fined, on that occasion the sum being E60.

The third accused, aged thirty two years, has nineteen previous convictions of which fifteen are for offences of dishonesty including nine for stock theft. His last conviction was in June,

3

1983 when he was fined E400 with 400 days in default of imprisonment with part suspended, that conviction being for stock theft. In June 1980 he was fined for housebreaking and theft and in 1981 was again fined for stock theft.

It is plain from their respective records that in the past the courts have, on the whole, shown remarkable leniency and restraint in dealing with the first and third accused. Both are clearly persistent offenders and, in my view, the time has long since past when the courts, realistically, could have any hope that either will mend his ways. In the case of those two accused, protection of the public has, in my judgment, become the paramount factor although the fact that only one head of cattle was stolen must, of course, be given due weight. To impose fines, albeit with a fairly swingeing sentence of imprisonment in default, was, in the case of these two men, to ignore the realities of the situation. In my view, the only appropriate sentence which could have been imposed upon these two accused was one of immediate imprisonment and the learned magistrate erred in principle in failing to impose such sentence. In exercise of my powers of review I, therefore, propose to vary the sentence in the case of these two accused by setting aside the fine and imposing a sentence of immediate imprisonment. I have considered whether such sentence should be more severe than the five years set as a default sentence by the learned magistrate but, in all the circumstances, have reached the conclusion that it should not be. However, the two accused can rest assured that if in the future they should commit further offences of stock theft much higher sentences will be imposed.

As for the second accused, I take the view that there is still some hope for him. Not only does he have youth on his

4

side but his record, though bad, is not as bad as that of his co-accused. In my opinion, his case should have been distinguished and, accordingly, his sentence will be varied to one of three years imprisonment of which eighteen months will be suspended for a period of three years on condition that he is not convicted of any offence of which theft is an element committed during the period of suspension.

N.R. Hannah

CHIEF JUSTICE