

IN THE HIGH COURT OF SWAZILAND

Cri. Appeal No. 81/1996

In the matter between:

THE KING

vs

1. Bheki Nathan Simelane Appellant

2. Boy Nginga Dlamini Appellant

3. Mlife Nkambule Appellant

CORAM S.W. SAPIRE, ACJ

J.M. MATSEBULA, J

FOR APPELLANTS IN PERSON

FOR THE CROWN MR. MASEKO

Judgment

(21/11/96)

Originally four accused were charged with the offences which are set out in the charge sheet. The first count was that they were guilty of the offence of theft. It is alleged that on or about the 5th of December, 1995, and at or near Evergreen Farm Amsterdam, in the Republic of South Africa, the said accused persons did unlawfully and intentionally steal two head of cattle valued at E3 200, the property of or in the lawful possession of Baadjie Joburg Mndzebele and that upon the 7th December, 1995 at or near Manzini

2

region, the accused did convey or bring the aforesaid herd of cattle in Manzini within the Kingdom of Swaziland and theft being a continuous offence the accused did commit the crime of theft within the jurisdiction of this Court.

The second count allege the contravention of Section 3(a) of Act 5/1982 . It is alleged that on or about 6th of December, 1995 and at or near Lushikishini Area in the Manzini Region, the accused either one or all did unlawfully and intentionally steal an ox the property of or in the lawful possession of Mdanuza Mhlanga valued at E1 500.00.

The evidence against the accused was damning. Accused Number 1 not only tried to sell the cattle to a third party but he was also found in possession of the cattle together with forged permits at the local abattoir. He gave false explanation of his position which was contradicted by witnesses being personally mentioned in his explanation.

As for appellant number 2 he was present when the accused and he went to Themba to borrow the truck. He did not explain his position by evidence but made an unsworn statement which is not in

accord with the body of evidence which was placed before the Magistrate.

The Magistrate relied on the evidence of Sicelo and Fana Nyoni and on that basis found that it was proved beyond reasonable doubt that accused 2nd appellant was actively involved in the commission of the offence.

As for number 3 he too was present when the cattle were stolen. And again the witnesses whose names I have just mentioned were clear on this point. His subsequent actions in running away were consistent with his sense of guilt.

We can find no fault in the reasoning of the Magistrate who from the record appears to have approached the case in a proper and judicial manner. The Magistrate has come to a conclusion that the accused are guilty and there is no reason to differ from it.

3

As far as sentence is concerned this court cannot interfere with the sentence imposed by Magistrate whose primary duty it is to impose an adequate and proper sentence. He distinguished between Appellant Number 1 and Appellant number three on the one hand and appellant number two on the other hand. Number 2 Appellant had an impressive list of previous convictions. Some of them are indeed old . But they indicate a long history of brushes with the law. It has often been said that stock theft and offences keen thereto offend against very basis of society, having regard to the importance which cattle play in the community.

The sentences imposed by the Magistrate are by no means inordinate and we are not prepared to interfere therein. For these reasons I would dismiss the appeals both as to conviction and the sentence.

I agree.

S.W. SAPIRE

J. M. MATSEBULA

ACTING CHIEF JUSTICE

JUDGE OF THE HIGH COURT