

IN THE COURT OF APPEAL OF SWAZILAND

Case No. 13/1997

In the matter between:

Boy Ngingi Dlamini Appellant

vs

Rex Respondent

Coram

Kotze, JP

Tebbutt, JA

Browde, JA

For Appellant In Person

For Crown Mr. J.W. Maseko

JUDGMENT

(22/9/97)

TEBBUTT, JA

The appellant and three others were charged before the Principal Magistrate at Manzini with three counts of stock theft. The facts are that on or about the 5th of December, 1995 and at or near Evergreen Farm Amsterdam, in the Republic of South Africa, the three accused persons stole two head of cattle valued at E3,200. Two days later on the 7th December, 1995 they conveyed and brought these two head of cattle from South Africa into the Kingdom of Swaziland, viz into Manzini.

The second count is that on the 6th of December and at or near Lushikishini area in

Manzini the three accused stole an ox valued at E1500.

The three accused were all found guilty by the Principal Magistrate in Manzini and they were sentenced by the Magistrate as follows: 2 of them to 2 years imprisonment and the present appellant before this Court to 5 years imprisonment. The reason why the appellant got an increased sentence was that he had a number of previous convictions. All three accused persons appealed to the High Court both against the convictions and the sentences. Their appeals were heard by the Acting Chief Justice Mr. Justice Sapire and Mr. Justice Matsebula who dismissed the appeals.

The appellant now seeks leave to appeal to this Court and Mr. Maseko for the Crown says he has no objection to this matter being dealt with as an appeal today.

As far as the conviction is concerned there is no merit in the appeal whatsoever. Two crown witnesses implicated the appellant in the offences. Sicelo Dlamini testified that he had met with the

first accused and the present appellant at Lobamba and they proceeded with another man to Mankayane by truck. They then went to this place at Amsterdam where the five head of cattle were loaded into the truck. Another witness, Fano Nyoni testified that the present appellant together with the other two accused had gone off with the truck and come back with a number of cattle loaded into the truck which was being driven by accused no. 1 but appellant was the man who was giving them all the directions. The Magistrate heard these witnesses and came to the conclusion that they were credible witnesses and were telling the truth. The appellant today says that the witnesses were lying but he has given this court no reason why these people should come to court and implicate him.

Moreover, he himself did not choose to go to the witness box to deny their story but gave an unsworn statement merely saying that he knows nothing about all this. It is quite clear that the appellant was actively involved in the commission of the offences and that his appeal against his conviction must fail.

As far as the sentence is concerned the appellant draws attention to the fact that the other two accused persons who were convicted with him each got two years imprisonment. I have already said that the reason why he got the increased sentence is because he has previous convictions. Four of those convictions, however, were in 1976 and 1979, a very long time ago. The most recent of the convictions was in 1986 some 10 years before the commission of the present offence. The court feels that the appellant must be given the benefit of the fact that he has not been in

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conflict with the law for some ten years and that it would be appropriate to suspend a portion of any sentence imposed on him. Mr. Maseko for the Crown has not raised any real objection to that.

In the result, therefore, the appeal against the conviction is dismissed. The appeal against the sentence succeeds to this extent that the sentence of five years is deleted and there is substituted therefor a sentence of 5 years imprisonment, two years of which are suspended for three years on condition that the appellant is not convicted of any offence committed during the period of suspension which involves dishonesty and for which he is sentenced to imprisonment without the option of a fine.

P.H. TEBBUTT, JA

I AGREE

G.P.C. KOTZÉ, JP

AND SO DO I

J. BROWDE, JA