

SHADRECK MBEDZI

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU & CHEDA JJ
BULAWAYO 1 NOVEMBER 2010 AND 23 JUNE 2011

S S Mlaudzi for the appellant
T Makoni for the respondent

Criminal Appeal

NDOU J: The appellant was convicted by a Beitbridge Magistrate of theft of stock as defined in section 114(2)(a)(i) of the Criminal Law [Codification and Reform] Act [Chapter 9:23]. The appellant is alleged to have stolen 19 bovine beasts and drove them to the homestead of Tomani Dube where they were sold. The appellant was sentenced to 25 years imprisonment. The appellant protests both conviction and sentence in this appeal. During the trial, he pleaded not guilty to the charge. His defence being that he had been hired to simply drive the cattle to the place of sale. There he did not take part in sale of the beasts but received payment for services. After a trial in which two state witnesses were called, the appellant was convicted of the charge and sentenced.

The first witness was Watson Dube, the Kraal head at Mazondo Tshipise area. He said that he knew the appellant by sight. Towards the end of January 2008 the appellant arrived at his homestead in the company of one Sheperd. They arrived around sunset. They had nineteen (19) beasts. They asked for a place to put up for the night. He asked them about the beasts before he offered them a place to sleep. The appellant told him that the beasts belong to him. The beasts did not have brand marks. The cattle were penned in his cattle pen. He gave them somewhere to sleep. The following day they left at 8am. He asked them where they were heading to. Once more it was the appellant who respondent and said they were going to look for a buyer at Tomani's homestead. He followed them to Tomani's homestead out of curiosity and also he haboured suspicion that the beasts belonged to the appellant as he had claimed. Further the appellant and Sheperd had promised to give him ZAR100 at Tomani's homestead.

Tomani was present together with his wife when he arrived. He told Tomani that the appellant and Sheperd were looking for a buyer for their cattle. Tomani informed them that

there was a man from Mozambique who was interested. The cattle were penned in Tomani's cattle pen pending the arrival of the buyer. The man from Mozambique arrived. Tomani, appellant and Shepherd entered the cattle pen. The Mozambican man bought fifteen (15) beasts leaving four (4) from the lot the appellant and Sheperd had brought along. The witness did not hear the exact purchase price but he heard the buyer say he had sufficient money for the fifteen (15) beasts and promised to return with more money for the remaining four (4) beasts. He saw the buyer hand over money denominated in South African Rand to the appellant. The appellant was given a lot of ZAR100 as the purchase price for the fifteen (15) beasts. Tomani and Sheperd watched this transaction as well. The witness was adamant that it was the appellant who negotiated the sale of the beasts with the man from Mozambique. The appellant left the four beasts that were not bought at his (witness's) homestead. The appellant later came for them. He said the appellant informed him that he had asked Sheperd to assist him drive the cattle. He said the appellant never told him that he had been hired to drive the beasts on behalf of someone. This testimony was found to be credible by the trial court. Such finding of facts is the province of the trial court and we have no legal basis to upset this finding.

This credible testimony evinces that the appellant claimed ownership of the stolen beasts. He was prime negotiator in the sale of the beasts. He received the purchase price. He made the necessary arrangements for the temporary custody of the remaining beasts. He later collected the four beasts. The appellant was shown by the evidence of this witness to have played a prominent role in the transaction involving these stolen cattle. His testimony was corroborated by that of the second witness Tomani Dube. The latter witness was also found to be credible. The appellant, who is a frequent person at cattle sales, drove these cattle without any form of cattle movement documents. The credible evidence established that the appellant drove these beasts without any form of documentation. He sold these beasts without any documentation. He sold the cattle with no brand marks. The appellant was the recipient of purchase price. He also collected the four beasts that were not bought. The credible evidence has established all the essential elements of the offence created by section 114(2)(a)(i), *supra*. His conviction cannot be faulted.

On the question of sentence there is no doubt that appellant's conduct is very serious. He stole a total of nineteen beasts. He sold fifteen to a Mozambican national who obviously took them to his country. Offences of this kind are prevalent in border areas like the one where this offence occurred. Such international cross border crimes are regarded as very serious. However, the trial magistrate misdirected himself by imposing the maximum term of imprisonment in the enabling statute. The respondent has conceded this error and has suggested that we interfere with the sentence imposed by the trial court. There is merit in this concession.

Judgment No. HB 81/11

Case No. HCA 113/08

CRB B 243/08

Accordingly the appeal against conviction is dismissed. The appeal against sentence is partially successful and the sentence of 25 year imprisonment imposed by the trial magistrate is set aside and substituted by one of 15 years imprisonment.

Cheda JI agree

Samp Mlaudzi & Partners, appellant's legal practitioners

Criminal Division, Attorney General's Office, respondent's legal practitioners