

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 19/2010

In the case between:-

THE STATE

and

PHEHELLO SETLHOBO

CORAM: CILLIé, J *et* JORDAAN, J

JUDGMENT BY: JORDAAN, J

DELIVERED ON: 11 FEBRUARY 2010

[1] In this matter the accused was charged with theft of stock or produce in contravention of the provisions of the Stock Theft Act, no 56 of 1959. He was duly represented, pleaded guilty to and was found guilty of the said charge. After being found guilty he was cautioned and discharged.

[2] It appeared that the charge was based on the fact that the accused stole certain mealie cobs consisting of 68 such cobs. After the matter was finalised the trial magistrate realised that

mealie cobs are not produce as defined in the Stock Theft Act and the accused was therefore wrongly charged with contravention of the said Act. The magistrate then sent the matter for special review in terms of section 304(4) of the Criminal Procedure Act, no 51 of 1977.

[3] In his reasons the magistrate says that he was made aware of the fact that mealie cobs are not produce as defined in the Stock Theft Act and therefore submits that the proceedings were not in accordance with the law and requests that the proceedings be set aside and the case be remitted to the trial court.

[4] In terms of the powers granted by section 17 of the aforesaid Act the then Minister of Justice extended the application of the Act to mealies as well but specifically excluding green mealies. That was done by means of Government Notice 821 dated the 29th of May 1964. Since what the accused stole were green mealies, the magistrate is quite correct in his view that the provisions of the Act do not apply to the case.

[5] It is however clear that the said Act does not create a new offence but just make special provision for theft of certain stock and produce as defined in the Act. In essence, the crime still remains ordinary common law theft. The Act only extends the jurisdiction of the magistrate's court in cases that fall under the Act so that a higher sentence can be imposed by such court. In the present matter the trial court did not make use of that extended jurisdiction and only cautioned and discharged the accused.

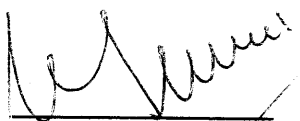
[6] In view of the aforesaid it is unnecessary to remit the matter to the trial court. In as far as the conviction purports to be a contravention of the Stock Theft Act, it should however be set aside and replaced by a conviction of ordinary theft. This court is in as good a position to effect that correction as the trial court will be without the necessity of remitting the matter.

[7] In the result the conviction of theft of stock or produce in contravention of the Stock Theft Act, no. 57 of 1959 is set aside

and replaced by a conviction of ordinary theft. The sentence is confirmed.


A. F. JORDAAN, J

I agree.


C. B. CILLIÉ, J

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