



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Appeal No: A51/2019

In the appeal between:-

MOLEKO STEPHEN NNETE

Appellant

and

THE STATE

Respondent

CORAM: MHLAMBI, J *et* MOLITSOANE, J

JUDGMENT BY: MOLITSOANE, J

HEARD ON: 9 SEPTEMBER 2019

DELIVERED ON: 19 SEPTEMBER 2019

- [1] The appellant was convicted in the Regional Court sitting in Koppies on a charge of theft of stock read with certain provisions of the Stock Theft Act, 57 of 1959. He was sentenced to 6 years imprisonment in terms of Section 276 (1)(b) of the Criminal Procedure Act 51 of

1977. He felt aggrieved by the sentence and this appeal is with leave of the trial court.

[2] The facts of this case are briefly as follows:

Mr Philemon Makwane testified that he was approached by two unknown people who needed to transport cattle to an auction in Vereeniging. He contacted the appellant and made arrangements for the latter to drive his (Makwane) vehicle and assist these two people. The following morning the appellant left with the witness' vehicle with the said unknown people to the auction. He transported five heads of cattle for the said people. At the auction, the appellant misrepresented to the auctioneer that he was the owner of the cattle that was to be auctioned. The cattle had, however, been stolen from the farm Nedersetting.

[3] The grounds on which the appellant relies on are briefly set out as follows:

- (a) That the sentence is shockingly high and inappropriate;
- (b) That the Court *a quo* erred in overemphasizing the factors in aggravation, while minimising the factors in mitigation;
- (c) The Court *a quo* did not take cognisance of the pre-sentence report and;
- (d) The Court *a quo* disregarded that the complainant suffered no loss due to the return of his cattle.

[4] It is trite that sentencing is pre-eminently the terrain of the trial court. The appeal court may only in limited circumstances interfere with

the sentencing discretion of the trial court, unless it has been convincingly shown that such a discretion was not properly exercised or the sentence was shockingly inappropriate. (See **S v Malgas** 2001 (1) SACR 409 (SCA); **S v Rabie** 1975(4) SA 855(A).

- [5] It is further trite that in assessing a proper sentence what has to be considered is the triad consisting of the crime, the offender and the interest of society- See **Zinn** 1969(2) SA537 (A).

- [6] The appellant is 47 years old and a divorced father of three children. Two of his children are majors and at tertiary institutions. He is responsible for payment of their tertiary fees. The youngest is a minor and stays with his mother and he contributes an amount of R1500 per month towards the maintenance of the said child. He has a string of previous convictions, mostly for assault. His last conviction was in 2012. The trial court was alive to the fact that none of his previous convictions had an element of dishonesty and correctly in my view, treated the appellant as a first offender.

- [7] It is the contention of the appellant that the trial court failed to properly have regard to the pre-sentence report. This contention is in my view without merit.

- [8] The Court *a quo* dealt extensively in both its judgement on the merits and sentence on the extent of the planning of this deed. It is clear to this Court that for the success of this theft, several people were involved in its planning. The planning included providing false

permits and procuring documents. The owner of the truck who later turned state witness also appears to have been involved in the execution of this crime. It is for that reason that the court *a quo* rejected the evidence of the owner of the vehicle and went to the extent of ordering the forfeiture of the vehicle in terms of Section 35 (1)(b) of the Criminal Procedure Act. The probation officer dealt with various sentence options and recommended a wholly suspended sentence. The court *a quo* rejected same. While the courts are usually guided and appreciate the recommendations of probation officers in sentencing, it has to be borne in mind that the court is not bound by the recommendations in those reports. Sentencing remains the domain of the trial court and deviation on appeal is only permissible in circumstances as alluded above.

[9] It is indeed so that the five cattle stolen were all recovered in a good condition. That should, however, be mirrored against the potential loss the complainant could have suffered had the sale eventuated. The value of the cattle was R 38 000. It is not through any goodwill on the part of the appellant that the cattle were recovered. Had it not been for the vigilance of the auctioneers and the prompt action by the police, the cattle might have been sold to unsuspecting third parties, to the detriment of the complainant and the third parties.

[10] In the pre-sentence report, the appellant alleges remorse on his part. This alleged apparent remorse was correctly rejected by the trial court. He failed to take the witness stand so that this "remorse" could be subjected to scrutiny by way of cross examination. This

allegation of remorse only surfaced during the discussion with the probation officer. No evidence was led to substantiate this remorse.

[11] Theft of stock is prevalent in our country. Not only does this crime affect the owners of farms, but it also affects the overall economy of our country. It affects the farm workers in that if this type of offence continues unabated, the farmers would most likely go out of business and the workers also stand to lose their employment. For this reason the court has a duty to protect the interests of society.

[12] In my view, the test in interfering with sentence on appeal is not whether this court would have given a different sentence than the one imposed by the trial court but whether the trial court exercised its discretion properly or whether the sentence is disturbingly inappropriate. I am unable to find that the trial court exercised its discretion wrongly or that this sentence is disturbingly inappropriate. I make the following order:

ORDER

1. The appeal against the sentence is dismissed.
2. The sentence is confirmed.
3. The order in terms of s103 (1) of the Firearms Control Act 60 of 2000 is confirmed.

PE MOLITSOANE

I agree

JJ MHLAMBI

**For the Appellant:
Instructed by:**

**Adv S Kruger
Legal Aid South Africa
BLOEMFONTEIN**

**For the Respondent:
Instructed by:**

**Adv Eskteen
Deputy Director of Public Prosecutions
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