

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review No. : 1384/06

In the review between:

THE STATE

versus

DANIEL KHASANE

First accused

MOCHEKACHEKA MOSITO

Second accused

CORAM: HANCKE J *et* KRUGER J

JUDGMENT BY: KRUGER J

DELIVERED ON: 21 DECEMBER 2006

[1] This is a special review, sent by the magistrate at Ficksburg.

[2] The two accused were charged with stock theft under Act 57 of 1959, alternatively, possession of stock or produce in respect whereof there is a reasonable suspicion that it has been stolen (section 2 of Act 57 of 1959).

[3] Both accused were legally represented and pleaded not guilty.

[4] During the evidence it appeared that the complainant is a Lesotho citizen and that the offence was committed in Lesotho. Both accused are Lesotho citizens. The matter was reported to the Lesotho Police and apparently another person is standing trial in Lesotho for theft of the same livestock. It appears that the hide of one of the stolen cows was recovered in Ficksburg.

[5] The magistrate took the view that he had no jurisdiction to pronounce on something that happened in Lesotho, and stopped the proceedings in terms of section 6(b) of the Criminal Procedure Act 51 of 1977. After he had adjourned the court, the magistrate realised that he did not have the power to stop the proceedings. He concluded that his order stopping the proceedings was erroneously made, and requests that it be set aside.

[6] The magistrate is correct that only the Director of Public Prosecutions or a person authorised thereto by the Director of Public Prosecutions holds the power to stop criminal proceedings under section 6(b) of Act 51 of 1977.

[7] The following order is made:

1. The order of the magistrate stopping the prosecution under section 6(b) of Act 51 of 1977 is set aside.
2. The case is remitted to the magistrate to continue and conclude the trial.

1. KRUGER, J

I concur.

S.P.B. HANCKE, J