

DOMINIC KATSANDE  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
HUNGWE & DUBE JJ  
HARARE, 16 July 2015

### **Criminal Appeal**

*S Chako*, for the appellant  
*E Makoto*, for the respondent

HUNGWE J: The appellant was convicted of three counts of stock theft as defined in section 114 (2) (b) of the criminal Law (Codification & Reform) Act, [*Chapter 9:23*] involving six bovines stolen on two separate days from three complainants. He was sentenced to an effective jail term of 27 years. Nothing turns on the sentence as the appellant abandoned his appeal against that sentence at the hearing of his appeal.

The present appeal was therefore limited to the propriety of the conviction on the three counts. The first point which needs to be made is a procedural one. It is this. Where an accused person appeals against his conviction on more than one count, the grounds of appeal must clearly and specifically set out the grounds of appeal being relied upon in respect of each specific count. Rule 22(1) of the Supreme Court (Magistrate Court) (Criminal Appeals) Rules, 1979. Similarly, the corresponding heads of argument ought to follow the same format, unless the grounds of appeal relied upon are identical in respect of each count. In the present case the appellant raised three grounds of appeal.

The first ground of appeal is that the learned trial magistrate erred in finding that the appellant knew that the cattle were stolen since there were documents which created the impression that the cattle whose slaughter he was registering as his appeared genuine. The second ground of appeal was similar to the first as it attacked the finding by the court that he knew these beasts to have been stolen when he facilitated their slaughter and subsequently bought the meat from the slaughtered cattle. Thirdly, it is contended that the court *a quo* erred in rejecting the evidence given by appellant's co-accused during trial in the court *a quo*

exonerating him.

The following facts were not disputed.

On 12 June 2009, the complainant Satnslous Muchoromi secured his cattle inside the cattle pen. The following morning he discovered that two oxen were missing. He reported the theft to police at Juru Growth Point, Murehwa. On the 12 June 2009 the complainant Manyanya Mundove secured his cattle inside a cattle pen. The next morning he discovered that someone had stolen his black bull. He reported the theft to police after failing to locate it. On 16 June 2009 Joseph Munhenga secured his cattle inside the cattle pen. The following morning he established that two of his oxen had been stolen. He reported to police. On 18 June 2009 the police established that the appellant had caused cattle to be slaughtered at Montana Meats Shamva abattoir early in the morning of 13 June and 17 June 2009. The paper work indicated that these cattle matched the description of the stolen cattle. Indeed there is no denial that in fact appellant made a telephone booking on two occasions to this abattoir leading to the slaughter of the stolen cattle under his name. The appellant had personally proceeded to collect the beef from the abattoir for sale in his butchery at Juru Growth Point. Police recovered part of this beef on the 18 June 2009. With appellant's co-operation they arrested the one accomplice who had come to collect the proceeds of sale of the stolen meat. From the abattoir police recovered the hides of the stolen cattle which had been slaughtered at appellant's behalf. There is sufficient evidence linking the appellant to the cattle which had been identified by some witnesses. Police also recovered fake ZRP Stock Clearance Certificates reflecting the details of the cattle slaughtered as well as the Animal Movement Permits in respect of the same. These documents are filed by the person seeking slaughter service from the abattoir. It is not in dispute that these documents were forged. Appellant is a confirmed customer of this particular abattoir. The documents contained false information regarding the procedures used to secure the cattle movement as well as the owners of the cattle and the authority who cleared the cattle for movement. Besides the meat, police recovered slaughter sheets in respect of the stolen cattle from appellant's butchery. A fake Police stamp was recovered from a pit toilet in the vicinity of the appellant's butchery. It had been thrown into the pit by one of the appellant's co-accused. On each occasion the appellant had ordered his son, in the dark hours of the morning preceding the slaughter, to accompany one of his co-accused to accompany them in driving the cattle to the butchery. The appellant would thereafter collect the beef personally and pay off the team which brought the cattle.

The appellant clearly had a lot of explanation to do during his trial. He tried to convince the trial court that his association with the cattle rustlers was innocent as he was tricked into believing that the documentation for the cattle was genuine. He had simply helped the individuals to secure service slaughter since the abattoir did not accept business from individuals but only butcheries. This explanation did not find any takers at the trial court.

It is true that the appellant did not personally take part in the driving away or the physical removal of the cattle from their respective pens. It is also true that he did not generate the cattle movement paper-work which the abattoir relied on to slaughter these cattle. However, the court in our view correctly rejected his explanation in respect of his association with the cattle in all three counts as false beyond doubt. There was, in our view, sufficient circumstantial evidence upon which to convict the appellant as an accomplice besides the evidence from his co-accused implicating him. First, the appellant confirms that he knew one of his co-accused as a cattle trader from whom he had previously bought cattle on several occasions in the past. He would, by virtue of that knowledge, have known the business ethics of his partner in business. He would have either approved of these or dissociated from any dealings with him or them. He chose to continue dealing with him or them without taking precautions as to whether the cattle he bought from him or them had not been stolen.

Secondly, by virtue of his profession, he would have been aware of how to handle stock purchases, hence he had the required documentation in his butchery at the time investigators approached it. Third, the appellant had expressly associated himself with the cattle notwithstanding the fact that he had been approached at night; that the paper-work relating to the stock was dodgy and that there was no guarantee that the ownership of the same could be guaranteed by the person driving the cattle. Fourth, he had telephoned a third party, the abattoir, indicating that the cattle were his. In fact he had assumed ownership right from the moment these had been driven to his shop at night. To assuage any suspicion the abattoir might raise, he had, for good measure, telephoned it to confirm the availability of the facility for slaughter of these cattle. His claim that the abattoir did not accept individual slaughter was rejected by the manager from the abattoir. There could not have been any basis for the court to entertain any doubt about the falsity of his explanation. In any event section 114 (2) (b) (i) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*] covers the position in which appellant placed himself. He knew the cattle had been stolen on each occasion they were brought. If he did not know, then he clearly realised that there was a real

risk that the cattle had been stolen. He took a calculated business risk in dealing with stolen cattle. The facts confirm this as does his conduct throughout. In the event we dismissed the appeal in its entirety at the end of the hearing.

DUBE J agrees.....

*Mushangwe & Company*, appellant's legal practitioners  
*National Prosecuting Authority*, respondent's legal practitioners