

CHAPTER 09:01
STOCK THEFT

ARRANGEMENT OF SECTIONS

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Act 21, 1996.

An Act to re-enact with amendments the Stock Theft Act.

[Date of Commencement: 31 December, 1996]

1. Short title

This Act may be cited as the Stock Theft Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"offensive weapon" means any article made or adapted for use for causing injury to the person, or intended by any person having it with him for such use by him, and includes, but is not limited to, a firearm, a spear, an axe, a hatchet, a club and a knife;

"police officer" includes a special constable, a member of the Police Reserve Force and an officer of the Local Police Force;

"produce" means the whole or any part of any skins, hides, horns or carcass of stock, any wool, mohair, ostrich egg or ostrich feathers;

"public sale" means a sale effected-

- (a) in any public market;
- (b) by any shopkeeper during the hours when his shop may by any law remain open for the transaction of business;
- (c) by a duly licensed auctioneer at a public auction; or
- (d) in pursuance of an order of a competent court;

"receive" has the meaning assigned to it in section 317 of the Penal Code;

"steal" has the meaning assigned to it in section 264 of the Penal Code;

"stock" means any horse, mare, gelding, ass, mule, bull, cow, ox, ram, ewe, wether, goat, pig or ostrich, or the young thereof;

"sufficient fence" means any wire fence or any other fence, wall or hedge through which no stock could pass without breaking it, or any natural boundary through or across which no sheep would ordinarily pass.

3. Stealing of stock or produce

(1) Any person who steals any stock or produce, or receives any stock or produce knowing or having reason to believe it to be a stolen stock or produce, shall be guilty of an offence and, notwithstanding the provisions of any other written law, shall be sentenced for a first offence to a term of imprisonment for not less than five years or more than 10 years without the option of a fine, and for a second or subsequent offence to a term of imprisonment for not less than seven years or more than 14 years without the option of a fine.

(2) Where, for the purpose of stealing any stock or produce, or in the course of stealing any stock or produce, violence or the threat of violence is used, the penalty shall be a term of imprisonment for not less than 10 years or more than 15 years without the option of a fine, and if the violence used or threatened involves the use of a firearm or other offensive weapon the penalty shall be a term of imprisonment for not less than 12 years or more than 20 years without the option of a fine.

(3) A person charged under subsection (1) may be convicted of the offence of stealing any stock or produce or of receiving any stock or produce notwithstanding that the person stated in the charge to be the owner of the stock or produce is wrongly named as the owner of the stock or produce.

(4) Any person who procures, incites, hires, directs, instigates, or colludes with, another person to contravene the provisions of subsection (1) shall be guilty of an offence and shall suffer the same penalties as the person who contravenes those provisions.

(5) Any sentence imposed in respect of an offence under this section shall be consecutive to and not concurrent with any other sentence imposed on the same accused person, and no sentence or any part of any sentence imposed in respect of an offence under this section shall

be suspended.

(6) Where a person convicted of an offence under this section is a holder of a fresh produce licence under the Trade Act, the court convicting the person may order the cancellation of the licence, and accordingly the provisions of section 20 of the Trade Act shall have effect.

4. Presumptions

In any proceedings, where it is proved to the satisfaction of the court that a person-

- (a) was found in possession of any stock or produce reasonably suspected of being stolen;
- (b) was found in possession of any stock or produce of which the brand or ear marks or numbers, or other identification marks have been altered, disfigured, obliterated or tampered with in any manner;
- (c) was found in possession of any stock or produce and unable to produce a bill of sale or other satisfactory evidence of ownership, identifying the stock or produce and the person from whom it was obtained, and from which such person can be traced;
- (d) was found in possession of any forged documents of sale or ownership in relationship to any stock or produce,

it shall be presumed that such person is guilty of an offence under section 3 in relation to the stock or produce concerned, and shall suffer the penalties provided thereunder, unless the contrary is proved.

5. Trespass with intent to steal

(1) A person who in any manner enters any land enclosed on all sides with a sufficient fence, or any kraal with intent to steal any stock or produce on such land or in such kraal shall be guilty of an offence.

(2) Where a person is found on any such land or in any such kraal, then, unless-

- (a) he satisfies the court that he had reasonable and lawful excuse for his presence there; or
- (b) he was proceeding along a road or thoroughfare traversing such land or part of such land,

the onus shall be on him to prove that he did not enter such land or kraal with intention to steal the stock or produce therein.

6. Night delivery of stock forbidden

Any person who for purposes of trade makes or accepts delivery between the hours of sunset and sunrise of any stock or produce sold or purchased or otherwise disposed of or

acquired by him in any other manner than at a public sale shall be guilty of an offence.

7. Tampering with stock or produce

Any person who knowingly tampers with, alters, or assists in tampering with, alteration of any brand or ear mark on stock or produce so as to, or be likely to, conceal or disguise the identification of such stock or produce shall be guilty of an offence and liable to a fine of P5 000, or to imprisonment for three years, or both.

8. Search, seizure and arrest

(1) Any police officer may, without a warrant, arrest and search any person found, or suspected of being, in possession or charge or control of any stock or produce if he believes, on reasonable grounds, that the stock or produce is stolen, whether or not that person has stolen the stock or produce himself, or received it knowing or having reason to believe that the stock or produce to be stolen, or has assisted in stealing the stock or produce, and may seize the stock and produce and any documents relating to it.

(2) A police officer who has arrested any person or seized any stock or produce in accordance with the provisions of subsection (1), shall as soon as possible take that person and that stock or produce, as the case may be, and any documents seized relating to the stock or produce, to the nearest police station.

(3) Without prejudice to subsections (1) and (2), whenever any justice of the peace, police officer or owner, lessee or occupier of land reasonably suspects that any person has in or under any receptacle or covering, or in or upon any vehicle any stolen stock or produce, such justice of the peace, police officer, owner, lessee or occupier may without warrant search such receptacle or vehicle and remove such covering, and if he thereupon finds any stock or produce which he reasonably suspects to have been stolen he may without warrant arrest such person and shall as soon as possible convey him and the stock or produce so found to a police station or charge office.

9. Document of identification to be furnished on disposal of stock

(1) Any person (including any auctioneer or agent) who sells, barter, gives or in any other manner disposes of any stock to any other person shall, at the time of delivery to such other person of the stock so sold, bartered, given or disposed of, furnish such other person with a document (hereinafter called a "document of identification")-

(a) stating-

- (i) his full name and address and, if the stock was sold, bartered, given or disposed of on behalf of some other person, also the name and address of such other person;
- (ii) the full name and address of the person to whom the stock was sold, bartered, given or disposed of;

(b) certifying that such stock is his property or that he is duly authorized by the owner thereof to deal with or dispose of it.

(2) No person to whom any stock has been sold, bartered, given or otherwise disposed of and to whom a document of identification is required to be furnished in terms of subsection (1) shall take delivery of such stock without obtaining such document at the time of delivery.

(3) Any person to whom a document of identification has been furnished in terms of subsection (1) shall retain it in his possession for a period of at least one year.

(4) Any person may within the period referred to in subsection (3) demand an inspection of such document, and upon such demand the person having possession of such document shall produce it for inspection to the person making the demand.

(5) Any person who-

(a) contravenes any provision of this section;

(b) contravenes any provision of subsection (4); or

(c) wilfully makes any false statement in a document of identification,

shall be guilty of an offence.

(6) Any person who delivers any stock to an auctioneer or agent for the purpose of sale or disposal in any other manner, shall, for the purposes of this section, be deemed to have disposed of such stock to such auctioneer or agent.

10. Acquisition of stock or produce otherwise than at public sale

(1) Subject to the provisions of this section, no person (in this section including an auctioneer or agent) shall, in any manner, acquire or receive into his possession any stock or produce for the purpose of sale except at a public sale.

(2) Where any person acquires or receives into his possession, otherwise than at a public sale, any stock or produce for the purpose of sale from any person who has no known place of residence (in this section referred to as "the seller"), he shall, at the time of delivery of the stock or produce to him, obtain a certificate issued by the seller in respect of the stock or produce.

(3) A certificate referred to in subsection (2) shall be issued not more than 30 days before the delivery of the stock or produce from the seller, giving a description of the stock or produce and certifying that the seller is entitled to dispose of or deal with such stock or produce.

(4) A person who has obtained a certificate referred to in subsection (2) shall retain it in his possession for a period of at least one year.

(5) A police officer may, within the period referred to in subsection (4), demand an inspection of such certificate, and upon such demand the person having possession shall

produce it for inspection.

(6) Any person who contravenes any provision of this section or who wilfully makes any false statement in a certificate referred to in subsection (2) shall be guilty of an offence.

11. Stock or produce driven or conveyed

(1) No person shall, without lawful authority, drive, convey or transport any stock or produce unless he is the owner or he has in his possession a certificate (hereinafter called a "removal certificate") issued to him by the owner of such stock or produce or the duly authorized agent of such owner, in which is stated-

- (a) the name and address of the person who issued the certificate;
- (b) the name and address of the owner of such stock or produce;
- (c) the place from which and the place to which such stock or produce is being driven, conveyed or transported;
- (d) the name of the driver, conveyor or transporter;
- (e) the date of issue thereof; and
- (f) if applicable, the registration number, model and make of the vehicle with which the stock or produce is being conveyed or transported.

(2) No person shall cause or permit any stock or produce of which he is the owner to be driven, conveyed or transported by any other person without furnishing him with a removal certificate which he is required to have in terms of subsection (1).

(3) Any justice of the peace, a police officer, or owner, lessee or occupier of land may demand from any person who is required in terms of subsection (1) to have in his possession a removal certificate, an inspection of such certificate, and upon such demand the person having possession of such certificate shall produce it for inspection to the person making the demand.

(4) No person who is or was employed by an owner or occupier of any land shall remove any stock or produce owned by him or under his control from any land owned or occupied by such owner or occupier unless he is in possession of a document furnished by such owner or occupier, the agent of such owner or occupier, or a police officer on a date not more than 30 days before the removal, which date shall be stated in the document, giving a description of such stock or produce and certifying that he was to the best knowledge and belief of the person furnishing the document entitled to remove such stock or produce on the date specified therein.

(5) Any owner or occupier of land, or any agent of such owner or occupier, shall, when requested to do so by any person who is or was in the employ of such owner or occupier and who is in possession on land owned or occupied by such owner or occupier of any stock or produce which he desires to remove therefrom, forthwith furnish him with any document which

he may require in terms of subsection (4).

(6) Any person who has obtained such a document as is referred to in subsection (4) shall retain it in his possession for a period of at least one year.

(7) Any justice of the peace, police officer, or owner, lessee or occupier of land, may, within the period referred to in subsection (6), demand an inspection of such document, and upon such demand the person having possession of such certificate shall produce it for inspection to the person making the demand.

(8) Any person who-

- (a) contravenes any provision of this section;
- (b) contravenes any provision of subsection (3) or (7);
- (c) wilfully makes any false statement in a removal certificate or a document furnished in terms of subsection (5); or
- (d) falsely declares that he is the owner of stock or produce which is being driven, conveyed or transported by him,

shall be guilty of an offence.

(9) For the purposes of subsections (1), (2) and (8)(d) "owner" includes any person who obtained stock or produce by virtue of an agreement of sale in terms of which such person does not become the owner of such stock or produce merely by virtue of the delivery to him of such stock or produce.

12. Wrongful arrest

(1) A person who under colour of this Act wrongfully and maliciously or without probable cause arrests any person or effects any search shall be guilty of an offence.

(2) In any charge under this section the onus of proof that the arrest or search which is the subject of the charge was not wrongful and malicious or without probable cause shall be upon the accused.

(3) Nothing contained in this section shall be construed as taking away or diminishing any civil right or liability in respect of a wrongful or malicious arrest.

13. Orders of compensation

The provisions of section 316 of the Criminal Procedure and Evidence Act, relating to the award of compensation to the victim of an offence, shall have effect where, on a conviction for an offence under this Act, it is proved that any person has suffered loss or damage as a result of such offence.

14. Forfeiture of assets derived from theft

(1) Upon application made by the police to the court of a senior magistrate or above, the court may order an investigation by the police into the dealings and assets of any person reasonably suspected of being engaged in the business of stealing or receiving stock or produce, or dealing in stolen stock or produce, or any other fraudulent activities in relation to stock or produce.

(2) If, upon such investigation, it is found that any assets of such person have been derived from or are attributable to any of the activities referred to in subsection (1) the court shall order the forfeiture of such assets to the Government.

(3) For the purposes of subsections (1) and (2), the court may make an order-

- (a) authorizing the police to search for and seize any assets of the person concerned, pending the investigation;
- (b) requiring any person to make available to the police any document relevant to the location or identification of any assets of such person;
- (c) prohibiting any dealing in any assets of such person without an order of the court; or
- (d) requiring any bank or other financial institution to produce to the police any information relevant to any assets of such person.

(4) Any person who has any interest in any assets seized or forfeited under this section may apply to the court to have such assets released.

(5) Any person who deals with any assets, which are subject to an order of the court under this section, in breach of or contrary to the terms of such order shall be guilty of an offence and liable to a fine of P10 000, or to a term of imprisonment for five years, or both.

15. Unclaimed stock or produce

(1) Any stock or produce seized by the police in accordance with the provisions of this Act and of which the owner is not known or cannot be found, may be removed to the nearest or most convenient pound or matimela kraal, and if not previously claimed by its owner, which claim shall be supported by satisfactory proof and all relevant documents, shall be dealt with in accordance with the provisions of the Pounds Act or the Matimela Act, as the case may be.

(2) Where the article seized under subsection (1) is a produce and if he considers it necessary the Commissioner of Police shall cause to be published in three editions of the *Gazette* at monthly intervals, and similarly in at least one newspaper circulating in Botswana and shall also cause to be placed in the nearest Kgotla, a notice giving particulars of the produce seized, or where no particulars are available a fair description of the produce, and a warning that if any of the produce remain unclaimed after a reasonable period of time, which shall not be less than two months after the date of the last notice published, they shall be forfeited to the Government and dealt with as the Commissioner of Police may direct, which

may include sale by public auction.

(3) Any produce seized, or taken into custody, by the police before the commencement of this Act, because it is suspected to have been stolen, or because the person lawfully entitled to it is unknown or cannot be traced, shall, within one month from the commencement of this Act, or within six months of its being seized or taken into custody, whichever is the longer period, be dealt with in accordance with the provisions of subsection (2).

16. Penalties

Any person who is convicted of an offence under this Act for which no penalty is otherwise provided shall be liable to a fine of P2 000, or to a term of imprisonment for one year, or both.