

Justice for Rural Livestock Farmers in Giyani Policing Area

W. Maluleke

Criminology & Forensic Studies, School of Applied Human Science, College of Humanities
University of KwaZulu-Natal, Durban, South Africa
Email: MalulekeW [AT] ukzn.ac.za

ABSTRACT--- *The majority of livestock farmers in the selected rural areas of Giyani Policing Area (GPA) (Makosha and Xikukwana) are losing out to stock theft with ineffective justice system options on offer (Magistrates' Court vs Traditional Court). They work in isolation on these courts destroys the livestock farmers' relationships with the local courts further causing increase in stock theft cases. This paper adds to the limited body of knowledge on the subject under exploration by highlighting the salient dimensions and components found to be essential in understanding the impacts of the available court systems. All of these salient dimensions and components were supported by literature review and fieldwork participant's responses. It is for this reason that the paper proposes this avenue of research. The paper adopted qualitative research approach, data were collected from 30 participants involving (7) Giyani SAPS STU officials (Key Informant Interviews - KIIs), (20:10) rural livestock farmers (Focus Group Discussions) and (3) Department of Justice and Development: Giyani Magistrates' Court [DoJ & CD: GMC] (KIIs) officials purposively, supplemented with courts session direct observations. The main findings of the paper show that the Traditional Court finalise stock theft cases speedily with financial rewards to the affected victims. The paper finds that the both officials for the courts in contention encounter difficulties to establish ownership of unbranded livestock, possession of stolen livestock illegally relocated or even slaughtered and control on the part of stock thieves. The impact of stock theft on rural livestock farmers resource-poor and small-scale farmers, is often more severe because they often lack resources to prevent and protect their livestock and they have small numbers of livestock. The paper also highlight the fact that the livestock farmers do not trust the functioning and performance of local DoJ & CD: GMC, their hope lies on the local traditional court operation. For recommendation; the paper advices that all role-players in the Criminal Justice System (CJS) should find ways to improve and expedite the handling of stock theft cases. It is noted that dealing with stock theft cases remains a specialised field for prosecutors, thus, the skills levels of court officials dealing with these matters need to be appropriate and adequate. Furthermore, the training of livestock farmers and responsible stakeholders of either of the available courts should be improved.*

Keywords--- DoJ & CD: GMC, GPA, justice, stock theft, Traditional Court, South Africa

1. INTRODUCTORY BACKGROUND

"Lexi xi ni vilerisaka i ku; vanhu lava vahi yivelaka vatweriwa vusiwana hi voko ra nawu loko va tengisiwa etikhoto, nawu a wuphameriwi xiswona" (My biggest concern is that the alleged thieves enjoy impunity and, if they fall into the hands of our courts, justice is not served satisfactory). Despite the seriousness of the stock theft problem, little research has been done to determine methods used by South African courts to control this scourge and their effectiveness in dealing with this crime. Research investigating the functioning of our courts to respond to prevailing criminality associated with stock theft in South Africa remains a critical issue and requires major academic support. This research will be beneficial for the rural emerging and communal livestock farmers in the GPA.

According to the researcher; rural emerging and communal livestock farmers are also known as rural smallholder farmers. (Chikazunga & Paradza, 2012) states that the definitions for rural smallholder farmers also known as family livestock farms in South Africa is highly contested in both the political and academic circles. Definitions include a long continuum of farmer types, ranging from rural landholders to small-scale commercial farmers. In some circles the terms 'smallholder farmers', 'communal farmers', 'emerging farmers' and 'black farmers' are treated as synonyms. Definitional issues are also aggravated by a lack of data available enumerating this sub-population, despite their importance in the country's food ecosystem. This group has largely been marginalised in the mainstream economy, suffering from 'double-barrelled exclusion': first, excluded by the past regimes along racial lines, and now excluded by market forces. Whereas, Poulton, Tyler, Hazell, Dorward and Kydd (2008) identified the defining characteristic of "commercial" agriculture as being 'production primarily for market'. In other words, it is not dependent on scale of production or related to particular types of crops. Whereas stock theft consists of the stealing of stock or produce belonging to another person (<http://www.issafrica.org/crimehub/page.php> ...).

This scourge ranges from stealing something for the pot to doing it on an organised scale (Geldenhuys, 2010). For the purpose of this paper, stock theft refers to stealing of domesticated livestock such as cattle, goats and donkeys with different identification methods used in denoting ownership. Some of livestock in dispute were unbranded, branded and over branded in the GPA.

In GPA, the livestock farmers resort to the Magistrates’ court and traditional court respectively for stock theft legal recourse. It remains evident that the livestock farmers of Makosha and Xikukwana village, located in GPA of Limpopo province have put their trust in the traditional prosecution system with regard to stock theft in the area. This utmost trust has been shown by the number of stock theft cases dealt with or referred to the traditional justice system instead of relying on processes of the local Magistrate Court. It also cannot be argued that the traditional justice system serves the purpose of the latter court and recognised by the Constitution of the Republic of South Africa, 1996. Chapter 12 of the Constitution recognises the significance of customary law and section 212 (1) highlight the value of the role played by traditional leaders particularly in matters affecting local communities, stock theft being one amongst such scourge matters affecting the rural emerging and communal farmers of Makosha and Xikuwani villages of GPA.

Against the above background, Clack (2013) recognises the fact that agriculture is one of the cornerstones in any country’s economy. Therefore, the different crimes committed within the rural agricultural communities need to be researched at all costs as they impact positively as a source of family sustenance to Makosha and Xikukwana villages of GPA respectively. Stock theft has evidently become a global and growing problem, which is more complex in nature than a mere property-crime related. Researchers in the field of humanities and related research areas neglect the importance of crimes committed in the rural areas of South Africa. To support these assertions, when comparing stock theft to other crimes in the country it may seem as a minor crime and because of this view research on the subject area has been neglected (Clack, 2013). Thus, the findings of this paper will fill the gap in the knowledge and understanding of stock theft crime within rural settings. Thus, the purpose of this article is to provide an in-depth profile of livestock farmers in the GPA regarding Magistrates’ court and Traditional court deliberations to determine what can possibly motivate livestock farmers to opt for either of the identified courts and the importance thereof. The significance of this study lies in the fact that it will contribute to building knowledge in the existing justice-stock theft focused literature. Greater insights can be offered to the DoJ & CD: GMC and Traditional Court practices in responding to rural stock theft crime to develop better relationships with the local livestock farmers.

1.1 The problem framework

Table 1: South African stock theft reported cases

Reported average(s) of stock theft cases in South Africa per year		
Period(s)	Number of cases	Yearly monetary loss
2009-2013	30 000	R750 million
2012		R430 million
1 April 2013 to 31 March 2014	56 954	R592 321 600 Total figure of recovered cattle: 22 070 Total figure of lost cattle: 34 884 Estimated lost value of cattle: R363 793 600
1 April 2013 to 31 March 2014	79 713	R135 512 100 Total figure of recovered sheep: 16 663 Total figure of lost sheep: 63 050 Estimated lost value of sheep: R107 185 000
1 April 2013 to 31 March 2014	34 988	Total figure of recovered sheep: 10 600 Total figure of lost sheep: R47 556 00
2014		R500 million

Sources: Maré (2014), Radebe (2012), South African Press Association [SAPA] (2014) and Doorewaard (2015).

In South Africa 80% percent of the land is mainly suitable for extensive livestock farming (Department of Agriculture, Fisheries and Forestry [DAFF], 2012). The existing literature indicates that stock theft is nothing new to livestock farmers and is considered by some to be as old as farming itself (Clack, 2013). All provinces in South Africa are affected by stock theft and it is a property-priority crime in most of the provinces, GPA included. The South African crime

statistics show that the occurrence of stock theft has increased in the past few years and affects both the commercial and emerging farm sectors (Parliament Monitoring Group [PMG], 2010). In the year 2012 stock theft caused estimated losses of R 300 million further crippling the South African red meat industry (Red Meat Producer’s Organisation [RPO], 2012). More worrying factor is that the official stock theft numbers and value of losses are shown to be under estimated (Clack, 2013; Scholtz & Bester, 2010) therefore; the true value of losses may be much more than these indications. As more farmers leave the industry because of stock theft more pressure is placed on food security in a country which is already a net importer of red meats (Bureau for Food and Agricultural Policy [BFAP], 2012; RPO, 2012).

Stock theft remains one of the biggest challenges; affecting the emerging farmer, commercial farmer and the community alike, Geldenhuys (2012). This practice is adversely and rapidly becoming a big threat to livestock farmers, affecting profitability and therefore the sustainability of the industry. In 2013/2014 financial year livestock valued at R2 billion was stolen (Sitole, 2015).

In the year 2012 it was reported that stock theft had cost the South African economy more than R430 million, and the year 2014 saw this figure exceeding well over R500 million (Radebe, 2012; SAPA, 2014 as cited in Doorewaard, 2015).

Despite the above indications on table 1, the number of stock theft cases in South Africa, one can still factor that the official stock theft statistics and value of losses are shown to be estimated, (Clack, 2013), thus the true value of losses indicated here may be much more than what is stated. As a result, Stock theft has far-reaching effects, rural communities struggle to make out an existence from meagre incomes in a harsh rural environment. In emphasis, households reported about 1.4% of theft of livestock as one of the commonly experienced crimes during the period April 2012 to February 2014. Furthermore poultry theft was perceived to be the most common crime estimated at around 2 018 (12,7%) and most feared crime as well, estimated at around 1 726 (10.9%) by households during April 2013 – March 2014 period across South Africa, (Victims of Crime Survey, 2013/2014:3&8). Furthermore, approximately 45 000 cases of stock theft are reported for court purposes per year, and only about 8 000 cases go to court. More than 500 of the court cases, involving more than 3 000 exhibits, use evidence obtained from Deoxyribonucleic Acid (DNA) analysis. About 95% of these cases are resolved and suspects are prosecuted, Mapholi (2015).

Considering the above discussion, the occurrence of stock theft in Giyani for the past five years reflects the following:

Table 2: Number of stock theft reported cases in Giyani (2011-2015)

Precinct	Crime	Number of years				
		2011	2012	2013	2014	2015
Giyani	Stock theft	58	71	36	43	39

Source: Crime Stats South Africa (2011-2015).

From the table above it appears that available statistics on reported stock theft cases across GPA have been unstable over the last five years reporting periods. 2012 recorded large number of reported stock theft cases in the GPA while 2013 reflect a sharp drop in stock theft reported cases with almost 50% witnessed. However, it should be highlighted these indications are not the true reflection of stock theft escalation across the country. While official statistics have put the daily stock theft figure for South Africa at 82 cases the National Stock Theft Prevention Forum (NSTPF) believes the true number per day is actually four times that. This as the Forum is appealing to farmers who had their livestock stolen to report cases to police. The Chairperson of the NSTPF Willie Clack says their figures show that stock theft cases are under-reported by about 63%. *'If we look at the amount of stock theft cases per year in South Africa, we have about 29 000 cases that have been reported, which in essence means 82 per day, instead of the 360 that should be reported. So we are actually receiving a bad end from our government and we only created this problem for ourselves.'* (Clack as cited in Kubheka, 2015). Furthermore, the impact to this crime suggest that stock theft is a crime familiar to the livestock farming sector and it does not only holds financial implications but has the ability to harm its victims psychologically and emotionally (Clack & Kruger, 2014 as cited in Doorewaard, 2015). Some claim that the gravity of the crime is not taken seriously despite its negative impact to the local economy.

2. GENERAL OBJECTIVES

The paper was aimed at providing an in-depth profile of livestock farmers in the GPA regarding the selected courts deliberations of DoJ & CD: MGC and Traditional Court to determine what can possibly motivate the rural livestock farmers to opt for either of the mentioned courts in the year 2012-2014.

2.1 Specific objectives are:

- To conduct a profile of livestock farmers in the GPA regarding available courts options;
- To determine the courts rate and assess the current position of either of the chosen court;
- To determine the level of satisfaction attained by rural livestock farmers regarding the available justice options;

- To determine the challenges the rural livestock farmers are facing in accessing the available justice options and suggest possible solutions.

3. RESEARCH METHODOLOGY

3.1 Description of the Study Area

Greater Giyani Local Municipality was established in 1969, South Africa. Greater Giyani Local Municipality has a population size of 244217, which makes it the second largest municipality in terms of population contribution (22%) in the Mopani District. According to Census 2011, 99,5% of the population are black African, with the other population groups making up the remaining 0,5%. It is an administrative and commercial centre of the Mopani district and the former capital of *Gazankulu*. Greater Giyani Local Municipality derives its name from the town Giyani, which is a Tsonga word meaning 'a place where people dance' and 'a land of the friendly people'. Giyani is also rich in cultural history with royal families dating back as far as 1822. The town of Giyani is located approximately 185 km from Polokwane, 100 km from Thohoyandou and 550 km from Pretoria. The municipality covers about 2 967 km² land area. Its eastern section borders the world famous Kruger National Park, with *N'wamankena* Village to the west, *Mphakani* Village to the south, and the Klein Letaba River to the north. The Municipality is demarcated into 30 wards and has 60 councillors. The ten traditional authority areas comprise 91 villages. Giyani town is the only town within the municipality and attracts most of the people from around the district (<http://www.statssa.gov.za/> ...).

3.2 Data collection Technique

For the purpose of this paper, a qualitative research approach was adopted to collect data while following phenomenology paradigm to strengthen the epistemological foundation of the paper, the perspectives on this paradigm suggest that it is an anti-positivist approach that upholds the natural scientific method as a norm in human behavioural research, by studying people's perceptions, cognitions, interpretations and beliefs regarding their immediate social setting (Matlala, 2012). This paper provided an in-depth profile of rural livestock farmers' available choices in line of Magistrate's court and Traditional court deliberations of stock theft cases in the GPA. This was done through Focus Group Discussions (FGDs), Key Informant Interviews (KII), and direct 6:3 court sessions observation schedules for the period October to November 2012. The attended cases were still to be finalised and the information was retrieved as the court proceedings commenced.

The participants of the study were chosen using purposive sampling; all residing and employed within GPA. The FGDs consisted of the following: rural livestock farmers (20:10 from each village) and KIIs were conducted with three DoJ & CD: GMC personals (Senior Prosecutor, Control Public Prosecutor; Court Interpreter). Overall 23 study populations were selected. Gender, age, educational background, and socio-economic differentiation did not play a role. All 23 participants were Tsonga-speaking Africans; the participant's selection was based on their knowledge of stock theft prevalence in the GPA of Limpopo Province; been a victim of this crime; and, been a member of the selected communities affected by this crime.

The analysis of information gathered by means of unstructured interviews is based on the interviewer's record. During this record-taking process, the interviewer took notes, with a view to writing a more detailed, and complete, report afterwards. Voice recorder was used when interviews were conducted, with the view to transcribing the information gathered at a later stage. The researcher then organised the data by categorising it based on themes, concepts, or similar features to achieve the trustworthiness of collected data in terms of credibility, dependability, conformability and transferability. Leedy and Ormrod (2005) who stated that data analysis takes place whenever theory and data are compared further argue this.

This paper was compiled in line with the University of South Africa Policy on Research Ethics (2007). Thus, the honest reporting on the application of research design and method applied, as well as the fact the permission was sought from the management of SAPS, Magistrate's Court and local Traditional Leaders and from all of the participants asserts to the ethical manner in which this paper was drafted. None of the research participants was exposed to inhuman practices.

4. RESULTS AND DISCUSSION

4.1 Processes of Magistrate Court towards stock theft cases

To this course, the Magistrates' courts form an important part of the judicial system, as it is where ordinary people meets the justice system daily. In terms of the Magistrates' Act of 1993, all magistrates in South Africa fall outside the ambit of the Public Service. The aim is to strengthen the independence of the judiciary and full jurisdiction was conferred to courts in rural areas and former black townships that exercise limited jurisdiction and depend entirely on the main courts in urban areas to deliver essential justice services. On the other hand, there are traditional courts (formerly chiefs' courts) in traditional community areas in rural villages.

The judicial functions of traditional leaders are regulated in terms of the Repeal of the Black Administration Act and Amendment of Certain Laws Act (Act No. 28 of 2005), (South Africa Government, 2016). However, according to Van Heerden (2011:17) when a court convicts a person of a crime, it follows a rather complex process before it decides on an appropriate punishment as it needs to take several aspects into consideration that are based on the facts of the case before the court, evidence in mitigation, the interests of the victim and other parties involved, and the court's observation of the occurrences in the courtroom. Thereafter, the carefully determined and appropriate sentence imposed, for example, a term of imprisonment, always includes objectives to be reached with that specific penalty, namely compensation to the victim, to serve as a deterrent, rehabilitation of the offender and prevention of further criminal acts.

In order to determine available justice options for livestock farmers in the GPA of Limpopo Province, the stock theft court session observation schedules were used to collect data for the study. The researcher was attempting to ascertain the fairness of the Justice System as offered by the DoJ & CD GMC and the Traditional Court toward stock theft victims. This is what transpired:

During this period (4th of October 4 of November 2012), the researcher was able to attend Three stock theft court sessions – Two (2) at the DoJ & CD GMC, and the other one (1) at the Xikukwana Traditional Court. The first court case at the DoJ & CD GMC involved Raider Mathebula (46) – said to be “one of the kingpins most feared in the stock theft ‘business’”. To show their grave concerns, during the court session, members of Mahlasegi Cluster Livestock Forum (MCLF) from various areas in the Mopani and Vhembe districts came in numbers, chanting their wish not to see him released, and together with the other five co-accused,” reported Chauke (2013). The other five suspects (Jan Shiviti, 32, Bennett Phosa, 32, Aubrey Manyike, 31, Joshua Mhlongo, 49, and, Dzingai Moyo, 30) were cited in the case, “State v J. Shiviti and five others – RG77/2012 on the court roll.” Among the Five (5) co-accused, one of them was a butchery owner from N'wamitwa village who was out on Twenty Thousand R20.000 bail as a first offender; one of his associates was also out on free bail. The other Four (4) were still in custody, by the time the study was conducted. The case in question was then postponed to 22 and 23 April 2013 for further hearing to allow the state to call more witnesses. Chauke (2013) asserts that this case was characterised by the battle between the State and the lawyers of the accused, with the need for more witnesses to be called by the State. The case has been in-and-out of court, since July 2012, when the suspects were arrested.

Farmers around both Mopani and Vhembe districts have been following it closely to ensure its success. Speaking after the postponement, the secretary of the *Mahlasegi* Cluster Livestock Forum (MCLF), Mr. Famanda Hlavangwani, said the Forum was pulling all strings to make sure that the suspects stayed in jail for a long time: “*Leswi hiswi lavaka i ku vona vavanuna lava, va pfalleriwa nkarhi wo leha, hita kota kuma nkarhi nyana wa ku fuwa swifowu swa hina kuya emahlweni, a ku na swin'wani*” (All we want is to see these men put away, so we can have a little chance to grow our herds again, and nothing else). The Forum represents rural livestock farmers from the Malamulele, Hlanganani, Sekhukhune and Giyani areas.

The suspects remained in custody and the charges brought against them were as follows:

- Stealing of stock and produce in February 2012, belonging to the under-mentioned individuals:
- Two cows of John Nkuna (72 years of age);
- One bull of Samuel Risenga Chauke (66 years of age);
- Five cows of Mkhacani Thomas Mashibye (48 years age);
- Six cows of Ben Magezi Maswanganyi (85 years of age) (Mr. Maswanganyi lost 17 herds of cattle during the incident, but 4 were found at the crime scene, while the other Two (2) were not found);
- Contravening the Meat Safety Act (Act No. 40 of 2000). This Act serves “to provide for measures to promote meat safety and the safety of animal products; to establish and maintain essential standards in respect of abattoirs; to regulate the importation and exportation of meat; to establish meat safety schemes; and to provide for matters connected therewith.” (South Africa, 2000).

However, all the accused pleaded not guilty to the charges faced. Lawyers represented them all. The Magistrate said the following in response to the alleged charges as reads:

It was revealed by the prosecution that, if they were found guilty, the competent verdicts awaiting them were as follows:

- As governed by the Firearms Control Act (Act No. 60 of 2000), the objective of this Act is “to establish a comprehensive and effective system of firearms control.” This is now the only arms- and ammunition-related Act for the national territory of the Republic of South Africa. Section 103 provides for the declaration by court of persons unfit to possess firearms, with exceptions (Intec College Study Guide, 2003:74; Department of Criminal Justice);
- Receiving of stolen property, knowing it has been stolen;
- Possession of goods without being able to give a satisfactory account of such possession (in terms of Section 36, Act No. 62 of 1995), and;

- Acquiring or receiving stolen property without having reasonable cause to believe that the person disposing of the property is the owner, or duly authorised by the owner (in terms of S37, Act No. 62 of 1955) – Section 260 (Joubert, 2009: 279).

The second case involved Akani Boswel Nkuna (RG 79/2011). This case was over a dispute of ownership of Two (2) cattle. Of his Eleven (11) cattle stolen in 2011, the complainant in question only managed to recover Two (2) cattle in dispute, before the court adjourned. The accused person over-branded the Two (2) cattle in dispute. The offender over branded the cattle in dispute to defaced the original brand by putting his own mark. This case was scheduled for 13 May 2013 to hear further State evidence.

4.2 Processes of Traditional Court towards stock theft cases

Table 3: Result from the Traditional Court cases

Stolen stock	No. of victims	Verdict given
4 goats. (Researcher’s note: And again, 1 of her donkeys, together with her friend’s3 donkeys, were missing at the time of conducting the study. She alleged that they were also stolen).	1	Verdict by the Traditional Authority: The accused alleged that he bought them in the neighbouring villages. However, he failed to produce the receipts of such. And then he was ordered to compensate the victims in question, he only managed to compensate victim No. 1 with two goats, victim No. 2 with Seven goats and victim No. 3 with six cattle. After the victims asked the court to compensate them with goats, not with money.
7 goats	2	
6 cattle	3	The accused woman was ordered by the traditional court to pay 30 thousand rands to the complainants in a 10- months period and handed a 1-year community service sentence. At the time of conducting the research, it was revealed that she was paying Three (3) Thousand Rands (R3000.00) per month. The researcher’s reliable source said that he is related to the accused: “she is a business woman operating in catering, tent hire, loan shark, and she has a nice house and a beautiful home,” he said. She used her bakkie to transport the meat to the destination (Makgagapatse), the targeted women sell meat at pension point they thought she was going to buy; in turn, she called our Traditional Authority to ask about the validity of the meat. As a prominent member of the community, who works closely with the Traditional Leader, this case was brought to our attention, and I had to commence with the investigation. <i>“After 4 sleepless nights, I discovered my sister was the perpetrator of this crime. Moreover, I arrested her on the spot.</i> <i>About the sentence, he said that “she did make a mistake, we are only correcting her mind; I guess she will be sorry and start respecting others.”</i>

Source: Researcher’s illustration (2012-2014).

The table above indicate that the traditional system has proved to be more efficient and easily accessible. Matters of stock theft are dealt with in a short space of time as compared to the procedure that may need to be followed should such matters be referred to the local police station. Considering the procedure of how investigations are conducted at the station level, for instance, opening a “docket”, collecting evidence and interviewing witnesses as well as ultimately referring the matter to court, this may take longer than when matters of such nature are dealt with by the traditional court. Despite the traditional court’s accessibility and efficiency, the main question remains: “is the traditional court conducted in a just and fair manner when prosecuting cases of stock theft?” In endeavouring to provide a convincing answer to this question, it is important to relate to the proviso of section 35 (3) of the Constitution, which provides that every accused has a right to a fair trial.

There are number of elements which paint a complete picture of a fair trial, and such are entrenched in section 35(3)(a)-(o). Before the contention of perceptions in paragraphs to follow, is section 35 even applicable or binding the traditional court? This is an essential question to answer in as far as justice is concerned.

It is law and implemented as such in Makosha and Xikukwana villages that prior the initiation of the prosecution or trial process, a prescribed fee of R200.00 has to be paid by the accused person. This, by implication, raises a concern as to whether the accused has admitted guilt before being tried or not. Being an accused of Stock Theft in the-said villages, it leaves the affected parties with no choice but to pay the fee. In the process of being tried, should the accused found not to be guilty, it is unquestionable that such party will receive their money back.

To point out one of the few elements to a fair trial, the author refers to subsection (o) which expressly stipulates that the accused person has the right to appeal to, or review by, a higher court. Traditional Courts are administered by the *Indunas*, who are representatives of the Chief. In this regard, the Chief is positioned at a higher level than the *Indunas*. The understanding should be, should the accused person be not satisfied with the decision taken against them by the *Indunas*, an opportunity should be afforded to have their case referred to a higher level, which is the Chief. This would serve justice and the procedure would be fair as well. However, this appears not to be the case. In the process of being tried by the *Induna* and his/ her associates, the accused person has no right to appeal such decision. The accused person is left with no choice but to pay the bill.

From the above argument, the question is, ‘*Is justice only done or seen to be done?*’ This remains an unanswered question which depends on the villagers’ level of satisfactory by the *Indunas* decision. It is again a question of law, which then addresses fairness in the process, whether the scale used to judge or take decision is based on balance of probabilities or beyond reasonable doubt as is a prerequisite in criminal cases. The existing void due to the ignorance of such legal technicalities raises eyebrows if indeed the traditional courts promote fairness.

Furthermore, the manner in which evidence is tendered at this court is more or less similar to the procedure followed by our Parliament in passing or adopting a particular proposed idea, the so-called majority rule. Often times the accused person would be found guilty of stock theft simply because the majority of the court attendants strongly believe that he/she has committed the crime. Irrespective of how technical the accused may endeavour to convince the court that he/she has not committed the crime, the majority believe would always be an influencing factor. This has been found to be a challenge in cases of stock theft wherein more than one accused is involved. Isolating the true perpetrator in the event has always seen to be difficult. It has become an accepted norm that all accused would be sanctioned equally. This is so done despite assessing the degree of the accused involvement in the commission of the crime. Codification of laws by the local traditional authorities is the route to take in this regard. Customary laws should be applied subject to the Constitution.

Fairness in conducting the traditional trial should be upheld. In as much as the traditional courts are accepted and seemingly, appears to be working well for the Makosha and Xikukwana residents, the basic human rights as entrenched in the Constitution should not be infringed in any way.

4.3 Magistrate and Traditional Court approaches to stock theft cases: Comparative views

The South African courts of law and the South African Police Service (SAPS) are part of the South African Criminal Justice System (CJS) that aims at maintaining order in society by preventing and controlling crime and criminal conduct, (Van Heerden, 2011). Section 165 of the Constitution of the Republic of South Africa, 1996, provides that the judicial authority of the Republic be vested in the courts. Section 165 also protects the independence, impartiality, dignity, accessibility and effectiveness of the courts to the extent that an order or decision issued by a court binds all persons to whom and organs of state to which it applies. South Africa is a constitutional state with separation of powers between the legal and executive authorities. All, which must pass, muster with the Constitutional Court, which is the ultimate court of appeal on legislation. South Africa’s legal system is based on Roman Dutch law (South African Business, 2012/13).

In terms of section 165 (1) of the Constitution, the judicial authority of the Republic of South Africa, 1996 vests authority in the courts established by the Constitution, and any other law. Section 165(2) of the Constitution requires the judiciary to be independent and impartial, and subject only to the Constitution, and the law. In terms of section 34 of the Constitution, every person shall have the right to have justifiable disputes settled by a court of law, or, where appropriate, another independent, impartial forum. It is, therefore, the constitutional right of a person to seek relief from the courts (Fouché, 2007). However, what the law provides is totally the opposite in DoJ & CD: GMC. Upstanding and trustworthy livestock farmers as being guilty of stock theft portray the accused in question. The researcher agreed with this assessment during the court proceedings, for example; that they were, indeed, guilty before the public eye.) It should,

however, be emphasised that it is not the community that deliver the verdict. Having said that, declaring someone guilty in the public arena is easy, but, in terms of Section 35 (3) of the Constitution of Republic of South Africa, 1996, every accused person has the right to a fair trial, which includes the right to be presumed innocent until proven guilty, remain silent, and testify during the proceedings. They still believe that their duty is to present themselves, and attend court.

Based on the presentations in court of the legal representatives of the accused, it was apparent that their duty was to find weaknesses in the evidence presented by the witnesses. Such evidence is, then, deemed inadmissible before the court. Often times, the witnesses and the-said victims fail to provide evidence that could prove their allegations irrefutably.

Thus, the witnesses demonstrate their frustration, no solid evidence is rendered, and they end up relying on the investigation conducted by the Giyani SAPS STU, and the colour of their stock, including injuries, wounds, the horns and spots, basing their conclusion on the fact that *'if something belongs to you, it is easy to identify it'*. The researcher thinks this is not enough to prove their case before the court, let alone, win a case. What also emerged during the court proceedings was the level of education of the livestock owners as witnesses and victims of this crime. Some, like Mr. Ben Magezi Maswanganyi, who lost 17 herds of cattle at that time, had formal education only up to Grade 2. So, the-said witnesses are, sometimes, treated with disdain, partly on account of their level of education.

In cases that involve forensic evidence, it can be conclusively proven that the crime was committed. In such instances, the experts' findings were submitted as evidence, and the investigators acknowledged the potential importance of such evidence. In addition, the prosecution presented such evidence before the court with more confidence.

Despite their denials, regarding the stock theft, the evidence to be presented by May 2013 would prove otherwise. One expected that the accused were up for a hefty sentence, as the Magistrate and the Prosecutor were intent on getting a conviction. However, the defence lawyers were equally competent, and appeared prepared to protect the-said ruthless criminals at all costs. Again, whatever facts are presented before the court, the final decision still lies with the Magistrate. With that said, livestock owners still invest their faith in the Legal Justice System, which has failed them in the past. They are tired of seeing criminals go scot-free, and waiting in vain to get justice. (Cases 1 and 2 were adjourned until April and May 2013). The livestock owners end up physically and emotionally drained, and frustrated that the courts of law are not delivering justice to them.

The performance of the DoJ & CD: GMC in the GPA is known, in terms of disposal of stock theft cases. The efficiency of the-said Magistrates' courts of law in handling stock theft cases is questionable, owing to their inadequate understanding of traditional markings, and colours, that local people are accustomed to using in livestock. Thus, the majority of rural residents argued that customary courts would be best suited to handle stock theft cases, because the *Tihosi* (kings), who preside over such cases in these courts, understand, and have profound knowledge of, livestock and stock theft cases. They further argued that some leeway should be given to stock owners to choose between whether they wanted their cases tried by the Customary courts, or Magistrates' courts, to avoid the loophole of manipulating the whole system, since the Magistrates' courts are not well-versed in matters of stock theft, and are corrupt. In most cases, perpetrators of stock theft engage government in lengthy and expensive cases that waste the tax payers' money, employing sophisticated lawyers who, more often than not, end up winning the cases on technicality grounds. These defence lawyers deploy sophisticated legal jargon that witnesses in stock theft cases – who, in most cases, are uneducated rural dwellers - fail to comprehend. We must not forget that the perpetrators, in most of these cases, are wealthy; so, they can afford to hire shrewd lawyers and advocates, who end up letting them off their crimes. The complexity of the Magistrates' Court procedures, and the involvement of defence lawyers, prevents justice from prevailing in stock theft cases.

Livestock farmers in Giyani acknowledged the inadequacies that the courts are faced with in dealing with stock theft cases. Therefore, in stock theft cases, courts should be provided with assessors who have vast knowledge of such issues. The victims of this crime should, also, know the procedures to follow, if they decided to follow an appeals route.

5. RECOMMENDATIONS

Based on the research findings of this paper. The following recommendations are made for considerations by the available court options in the GPA, rural livestock farmers, local police station commander and STU's commander:

- For practical guidelines and operations, the paper recommend that for stock theft cases to be finalised speedily by either of the available courts, the process integrated with the new Case Flow Management System as implemented by the South African judiciary should form part of resolute solution. This system is believed to ease the burden on court rolls and reducing the previous long wait for cases to be heard in court, while placing more emphasis on the assignment and allocation of cases to a judicial officer at the earliest opportunity and placing responsibility of managing the flow of cases in an efficient and effective manner to ensure its speedy finalisation. This system is enjoying notable successes in Botswana and United States respectively. This will obviously encourage the rural livestock farmers to lay stock theft charges. The courts should avoid constant remands and the officials attached to

the DoJ & CD: GMC should focus their energies on improving their skills through training initiatives and skills transfer to the local traditional leaders on how to respond and deal with stock theft cases; and

- The relevant stakeholders; livestock farmers and the available court system should be made aware of the difficulty of prosecuting stock theft cases within rural settings as well as the contributing factors to this scourge, for example; establishment of ownership of unbranded livestock, possession and control on the part of stock thieves. Furthermore, all role-players in the CJS should find ways to improve and expedite the handling of stock theft cases. The possibility of including forensic investigation, such as the use of DNA in combating and prevention of stock theft by the SAPS Stock Theft Units should receive greater support in this regard. Thus, there must not be an over-reliance on SAPS STUs to combat and prevent stock theft in the GPA as they cannot do this in isolation with the relevant parties. Station commissioners and STUs commander must encourage all police members and rural livestock farmers to be vigilant for stock theft and assist in the detection of stock theft, for example; conducting of permits checks while livestock is transported and verifying livestock ownership. To this course, the Road Traffic Inspectorate (RTI) and Society for the Prevention of Cruelty to Animals (SPCA) should also be requested to monitor stock movements and conduct checks. The issue of justice on stock theft is a serious one and further extensive research is needed in order to address, combat, prevent and understand future interventions and occurrences of this scourge.

6. CONCLUSION

Hiswona, vayivi va swifuwo va rhambana, vana seketelo wa nawu, vaswitiva vata hlula hambani nandzu wo tika kanjhani (Yes, the stock thieves recruit one another, and they have the support of the judicial system, knowing they will win the case, despite the seriousness of the said case). This paper explored the available justice choices for rural livestock farmers; by using qualitative research approach. Specifically, the paper provided an in-depth profile of rural livestock farmers in the GPA regarding the selected courts deliberations to determine what can possibly motivate livestock farmers to opt for either of courts. Their chosen options were assessed, challenges experienced were espoused, and the importance of adopting a certain court system was highlighted.

A major finding of this paper was that most participants have a favourable perception about the operations of the local traditional courts in solving stock theft cases speedily, they lost trust and hope on the DoJ & CD: GMC functioning leading to their less participation in the process. It was also revealed that the experienced low conviction rates, constant remands and high numbers of unsuccessful prosecutions for stock theft cases discouraged them from laying charges thereof.

In order to address the current practices, especially the work of the available court systems for the rural livestock farmers to ensure effective prosecutions, the following should be considered. There is need for an outreach and community liaison practices, which should form part of stock theft solution. It remains evident on this paper that the DoJ & CD: GMC's design and administrative structures is not adequately flexible and lack commitment to respond to emerging stock theft problems identified by the rural livestock farmers specifically. Therefore, the researcher suggest for the collaborative efforts between the identified courts, this can see the establishment of the 'Community Court' in the GPA; this should interfaces with the community through a number of mechanisms, one of which should be its informal advisory committee led by the DoJ & CD: GMC. The committee should consists of: representatives from the Court, including the magistrate or the judge; the Chairperson of the Community Policing Forum (CPF), Senior public prosecutor(s) as well as; representatives from each of the local CPFs who should sit on the advisory committee for CPF; police; representatives from the rural livestock farmers and from business associations such as butchery owners that are actively involved to address the grassroots of this problem. The matters not solved adequately at traditional court should be transferred to the DoJ & CD: GMC urgently and the rural livestock farmers should be clearly educated about the available justice options.

7. ACKNOWLEDGEMENT

The researcher would like to say thank the Giyani SAPS STUs officials, rural livestock farmers in Makosha and Xikukwana Villages respectively and the officials attached to the DoJ & CD: GMC for participating in this paper. Your efforts are much appreciated.

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