

Act No: CAP. 355

Act Title: STOCK AND PRODUCE THEFT

An Act of Parliament to provide for the recovery of fines imposed for the theft of stock or produce and to make persons liable to account for the possession of stock or produce in certain cases

[Act No. 18 of 1933, Cap. 206(1948), Act No. 4 of 1959, Act No. 28 of 1961, Act No. 43 of 1962, L.N. 649/1963, L.N. 2/1964, Act No. 21 of 1966.]

[Date of commencement: 5th May 1933.]

Subsidiary Legislation

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Subsidiary Legislation

1. Short title

This Act may be cited as the Stock and Produce Theft Act.

2. Interpretation

In this Act—

“possession” has the meaning assigned to it by the Penal Code Cap. 63;

“proclaimed district” means any area declared as such by the Minister, by notice in the Gazette;

“produce” means agricultural produce and includes ostrich feathers;

“sell” includes barter or exchange;

“stock” means the male, female or young of any animal mentioned in section 278 of the Penal Code, and includes poultry; and further includes the meat, hide or skin or any part of any such animal or bird;

“theft” includes any offence punishable under Division V of the Penal Code and an attempt to commit any such offence.

3. Warrant for levy of fine by distress

(1) Whenever any person is sentenced to pay a fine on conviction of theft of stock or produce, or of an offence under this Act, the court passing sentence may, unless the fine is paid within the time limited by the court for payment, issue a warrant for the levy of the fine by distress and sale of any property of the offender.

(2) For the purposes of subsection (1), “fine” includes compensation and costs.

4. Effect of warrant

Whenever a warrant has been issued under section 3 and no or insufficient property of the offender is found to satisfy the fine, a Provincial Commissioner may endorse the warrant to such extent as he may deem fit for execution against the property—

- (a) of any member or members of the offender's family;
- (b) of any inhabitant or inhabitants of the village or place in which any stolen stock or produce has been found;
- (c) of any member or members of the sub-tribe to which the offender belongs;
- (d) of any member or members of the tribe to which the offender belongs,

and a warrant so endorsed shall be executed in accordance with the endorsement thereon.

5. Repealed by Act No. 43 of 1962.

6. Rewards

A court may award to any person or persons giving information which has led to a conviction under this Act any sum or sums not exceeding altogether one thousand shillings:

Provided that any such sum or sums shall not exceed one half of the fine paid.

7. Offender residing with tribe other than his own

Where an African (including a Somali) ordinarily and voluntarily resides within a village of any sub-tribe or tribe of different origin, he shall be deemed to be a member of that sub-tribe or tribe for the purposes of this Act.

8. Illegal possession of produce

(1) Any person who has in his possession produce which may reasonably be suspected of being stolen or unlawfully obtained shall, if he fails to prove to the satisfaction of the court that he came by the produce lawfully, be guilty of an offence and liable on conviction to the penalties prescribed for theft.

(2) For the purposes of this section it shall be sufficient, in order to raise a reasonable suspicion that any produce is stolen or unlawfully obtained, if, when required by the person who arrests him to account for his possession of the produce, the person arrested fails to account therefor or gives an account which the person who arrests him reasonably finds insufficient.

(3) If any person is convicted of an offence under this section by a subordinate court of the first class, that court may award any penalty prescribed therefor.

9. Illegal possession of stock

(1) Any person who has in his possession any stock which may reasonably be suspected of being stolen or unlawfully obtained shall, if he fails to prove to the satisfaction of the court that he came by the stock lawfully, be guilty of an offence and liable on conviction to the penalties prescribed for theft.

(2) For the purposes of this section it shall be sufficient, in order to raise a reasonable suspicion that the stock is stolen or unlawfully obtained, if, when required by the person who arrests him to account for his possession of the stock, the person arrested fails to account therefor or gives an account which the person who arrests him reasonably finds insufficient.

(3) If any person is convicted of an offence under this section by a subordinate court of the first class, that court may award any penalty prescribed therefor.

10. Inquiry by magistrate where stock theft apprehended

(1) If a magistrate having power to hold a subordinate court of the first class is informed on oath that the members of any tribe or sub-tribe, or any persons residing or being in any area, are likely to act or have acted in a manner which may lead to bloodshed or to the theft of stock, he shall proceed to inquire into the truth of the information.

(2) An inquiry held under subsection (1) shall be conducted in the same manner, as far as may be, as an inquiry under the law relating to criminal procedure.

(3) When conducting an inquiry under subsection (1) the magistrate shall not be bound by the rules of evidence but may receive any evidence which appears to him to be relevant.

11. Order of magistrate

(1) If, after an inquiry held under section 10, the magistrate is satisfied that any members of a tribe or sub-tribe, or any persons residing or being in an area, are likely to act or have acted in a manner which may lead to bloodshed or to the theft of stock, he may order all or any of the members of that tribe or sub-tribe, or all or any of the persons concerned, to execute a bond, with or without sureties, for their good behaviour or for keeping the peace, as the case may be, during such period not exceeding three years as he may specify.

(2) The principal members of the tribe or sub-tribe, or of the persons concerned, from which it is proposed to require a bond under this section shall be given an opportunity of showing cause why a bond should not be required.

12. Failure to comply with the order

(1) If a magistrate having power to hold a subordinate court of the first class is informed on oath that any member of any tribe or sub-tribe, or any person residing or being in any area, who has executed a bond under section 11 has, during the continuance in force of that bond—

(a) acted in such a manner as to have caused or to have been likely to cause bloodshed; or

(b) stolen stock,

he shall inquire into the information in such manner as he may think fit, giving, if practicable, representatives of the tribe or sub-tribe, or of the persons concerned, an opportunity of being heard, and if he is satisfied of the truth of the information he shall order that the bond be forfeited.

(2) A magistrate who orders a bond to be forfeited under this section may direct that so much of the amount of the bond as he specifies shall be paid to such person or persons or to such local authority as he shall name; and the balance of the amount or, in default of any such direction, the whole amount, shall be paid into the Consolidated Fund.

13. Certain provisions of Cap. 75 to apply

The provisions of sections 55, 56, 57, 58, 59, 60 and 61 of the Criminal Procedure Code shall apply, mutatis mutandis, to any person ordered to give security by virtue of section 11 of this Act and to any surety or bond.

14. Power to seize stock following theft

(1) If any magistrate is informed on oath that any stock which has been stolen have been taken to a place in a proclaimed district, and that it is necessary or expedient that a warrant should issue under this section in order to effect the discovery, identification or recovery of the stock, he may by warrant under his hand authorize a police officer or an administration police officer to seize and impound, or to cause to be seized or impounded, all stock, or such number of stock not exceeding such number as may be specified in the warrant, found in that place of the same or a similar description to that of the stock stolen, and to retain the stock so seized and impounded for such period as shall be specified in the warrant:

Provided that a warrant issued under this section shall not authorize the retention of stock for longer than—

(i) twenty-one days; or

(ii) if, before the expiry of twenty-one days, a person has been charged with the theft of any such stock or with receiving or retaining any of such stock or of being accessory after the fact to the theft, receiving or retaining, fourteen days after the conclusion of the trial of that person or after the determination of any appeal against any order or sentence made or imposed as a result of the trial or against any order made on appeal (whichever is the later),

whichever is the longer.

(2) Any stock seized under this section may, for the period of the seizure, be removed from the place of seizure to a place of safety, but shall not, unless for special reason the police officer or the administration police officer responsible for the seizure considers it necessary so to do, be removed further from the place of seizure than is necessary for the safe custody of the stock, and the officer shall take all reasonable precautions to prevent any unnecessary movement of the stock.

15. Repealed by 21 of 1966, 1st Sch.

16. Prohibition of sale of stock or produce in proclaimed district at night

(1) No person shall sell or deliver any stock or produce in a proclaimed district between sunset and sunrise, and any person so doing and any person buying or taking proclaimed delivery of any stock or produce which is sold in contravention of this section shall be guilty of an offence and liable to a fine not exceeding one hundred shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) Subsection (1) shall not apply to the registered holder of agricultural land within the proclaimed district under grant lease from the Government, or a county council, as the case may be, or to his duly authorized agent, in respect of stock or produce raised on that land or to the purchaser thereof.

17. Offences cognizable

All offences under this Act shall be cognizable to the police