

TRESPASS. — CLAIM FOR DAMAGES

1. "Section 77 of Proclamation 387 of 1893 as amended by Proclamation 60 of 1900 provides that:

"The native custom that the proprietor shall take the trespassing stock or notify the trespass to its owner when known, and the said owner being in the same or an adjoining location or immediate neighbourhood, shall continue to be in force in the native locations aforesaid, provided that if such owner shall refuse to pay the damage claimable under the preceding clause, the said proprietor may impound the said stock.

In this case there is no evidence of a demand for payment at the time defendant reported the trespass nor of the plaintiff's refusal to pay either verbally or by conduct. In these circumstances defendant was not justified in immediately impounding the horses.

Mgokeli Arozi vs Beleni Manyakenyaka, 1936 N.A.C. (C.S.) 137

See also Sikiti vs Simamba 1 N.A.C. 44

" Napombani Tshamba vs Mshweshwe Kondo, 1936 N.A.C. (C.S.) 226.

2. TRESPASS — The Right to Impound

"That a native woman has the right to impound stock found trespassing on her husband's land seems to have been accepted in the case of Mnuene vs Ngongolele, 5 N.A.C. 174

MANTSUNDU MQANA vs MASINGO NDIKONGO, 1936 N.A.C. (C.S.) 226.

TRESPASS — INFORMING OWNER OF TRESPASS.

"It was laid down in the case of Muti Qomboti vs Nyumbu Hlobo 1930 N.A.C. (C.S.) 36 that the onus is upon the plaintiff to prove that defendant knew when he found animals trespassing that they were the plaintiff's."

MQANA vs NDIKONGO, 1936 N.A.C. (C.S.) 226.

"If a person seeing stock could take it to impound without making any inquiries whatever as to their ownership, the object of regulation 77 of the Trust Regulations would be defeated, which was to prevent irritation that would naturally be caused by the

removal of a main stock for what might be a very trifling trespass  
to a distance from his own kraal, thereby depriving him & his family of its  
use, perhaps several days; also in order that he might know as soon as  
possible that his stock had committed trespass, and thereby be afforded  
an opportunity of paying the amount laid down in the regulations  
(See Sibiti v Senambe, 1 N.A.C. 4).

Therefore the defendant acted illegally in impounding the stock  
without notifying him (the plaintiff) of the trespass & demanding trespass fees.  
MANTSU ND MQAWA v MASINGO NDIBONGO, 1936 N.A.C. (C.O.) 226