

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

vs

**DEON HAUSEB (ACCUSED 1)
LEVI GOOSTE (ACCUSED 2)
CHRISTJAN KONJAK (ACCUSED 3)**

(HIGH COURT REVIEW CASE NO.: 646/2007)

CORAM: PARKER, J *et* SILUNGWE, AJ

DELIVERED: 10/08/2007

REVIEW JUDGMENT

SILUNGWE, AJ [1] This is an automatic review matter from the Gobabis Magistrate's Court in which all the accused persons were tried for, and convicted of, stock theft involving one ox, valued at N\$3000-00. They were sentenced as follows:

*Accused 1: Five (5) years' imprisonment;
Accused 2: Five (5) years' imprisonment; and
Accused 3: Six (6) years' imprisonment.*

[2] The convictions appear to be in accordance with justice, but the sentences are a different kettle of fish.

[3] When the Court *a quo* was requested to furnish reasons for the sentences imposed, it transpired that the presiding Magistrate had since

left the magisterial service. Nevertheless, the Magistrate in-charge of the station made these persistent comments:

"I have perused the record of the proceedings and could find no compelling reasons as to why she imposed the sentences she did on the accused persons, taking into account that all three accused persons are first offenders the ox was recovered (dead) and the amount was not so substantial.

The sentences imposed should be interfered with ..."

[4] I agree that the sentences should be disturbed. Although the crime in question was committed on March 25, 2005 (prior to the enactment of the Stock Theft Amendment Act 19 of 2004, which ushered in minimum sentences in respect of certain stock theft offences) the accused were convicted and sentenced on April 06, 2005. Pursuant to section 14(1)(a) of the Stock Theft Act No. 12 of 1990, as amended by Act 19 of 1993, the accused, who were first offenders, were each liable:

- "(i) to imprisonment for a period not exceeding 10 years; or*
- (ii) to a fine not exceeding N\$40 000; or*
- (iii) to both such fine and such imprisonment ..."*

Each one of them was, at the time of the commission of the crime, a young person aged 19 years. Besides, Accused 1 and 3 each had a common law wife. Accused 1 had two children and Accused 3 had one child. Both Accused had lost their parents. An aggravating factor against Accused 3 is that he was, at the material time, an employee of the complainant and, as such, he was in a position of trust. It is, however, proposed to give all of them uniform sentences.

[5] In the premises, the following orders are made:

- (1) the convictions are confirmed;

- (2) the sentences of five (5) years in respect of Accused 1 and 2 and of 6 years in respect of Accused 3, are set aside - instead, each accused is sentenced to 30 months' imprisonment, antedated to April 06, 2005, when they were initially sentenced by the court *a quo*;
- (3) in the event that the accused have earned remission of sentence, they should be eligible for discharge immediately.

SILUNGWE, AJ

I agree

PARKER, J