

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

VS

**HANS NASEB
JOSEF NAEB**

(HIGH COURT REVIEW CASE NO.: 1371/2007)

CORAM: MULLER, J *et* SILUNGWE, AJ

DELIVERED: 11/09/2007

REVIEW JUDGMENT

SILUNGWE, AJ [1] Both accused appeared before the Tsumeb Magistrate's Court on a charge of stock theft, namely, theft of a goat valued at N\$400-00. They pleaded guilty and were convicted as charged. As first offenders, they each were sentenced to direct imprisonment of 18 months.

[2] Section 14(1)(a)(i) of the Stock Theft Act No. 12 of 1990, as amended by Act 19 of 1994, provides that anyone who is convicted of stock theft, other than poultry, of which the value is less than N\$500-00, shall be liable, in the case of a first conviction, to imprisonment for a

period of not less than two years without the option of a fine. It follows that the sentence of 18 months' imprisonment imposed on each accused in this case was impermissible in that it fell short of the requisite statutory minimum sentence.

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

- (1) the convictions are confirmed but the ensuing sentences are set aside on the basis that they are incompetent;
- (2) the case is remitted to the court *a quo* for sentencing in accordance with the law, including a consideration of section 11(4) of the Stock Theft Amended Act No. 19 of 2004.

SILUNGWE, AJ

I agree

MULLER, J