



**REPUBLIC OF NAMIBIA**

**CASE NO. CR 10/2011**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**NEFINE IMMANUEL**

**ELIAZER NEPAYA**

**HIGH COURT REVIEW CASE NO. 516/2009 OSHAKATI**

**REVIEW CASE NO A143/2009**

**CORAM: SHIVUTE, J *et* SIMPSON, AJ**

Delivered: 2011 April 12

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**REVIEW JUDGMENT**

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**SHIVUTE, J:** [1] The two accused persons were convicted of theft of several items valued at N\$495.00 including a live chicken valued at

N\$50.00. Each accused was sentenced to N\$500.00 fine or five months imprisonment wholly suspended for 5 years on condition that each accused is not convicted of theft committed within the period of suspension.

[2] I raised a query with the learned magistrate as follows:

*“The two accused persons were convicted of theft. Among the items listed to be stolen was a live chicken. Why were the two accused persons convicted of theft of a chicken if they ere not charged under the Stock Theft Act?”*

[3] The learned magistrate responded in the following terms:

*“I convicted both accused persons on a charge of theft on various items including a live chicken. I concede that this is irregular and I erred in this regard. The accused persons should have been charged of theft under the Stock Theft Act for the chicken (sic). It is an oversight and is regretted. I am however of the view that the net effect of the conviction will not prejudice the accused persons. I however stand guided by the Honourable Reviewing Judge on this respect.”*

[4] The learned magistrate rightly conceded that he was not supposed to convict the accused persons of theft of a live chicken, as they were not charged under the Stock Theft Act.

[5] In the light of the oversight referred to above, the inclusion of a live chicken among the list of several items stolen as indicated in the charge was made erroneously. The accused persons were supposed to be

charged with two counts namely theft (common law) and theft under the Stock theft Act, 1990 (Act 12 of 1990).

[6] In the result:

(1) The conviction of theft of several items including a live chicken is set aside and substituted with theft minus a live chicken.

(2) The sentence is confirmed as no prejudice will be caused to the accused.

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**SHIVUTE, J**

I agree

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**SIMPSON, AJ**

