



**CASE NO. CR 43/2011**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

versus

**PIETER GAESEB  
ACCUSED**

HIGH COURT REVIEW CASE NO. 373/2010

**CORAM:** SWANEPOEL, J *et* SIBOLEKA, J

Delivered on: 26 May 2011

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**REVIEW JUDGMENT**

**SWANEPOEL, J.:**[1] In this matter the accused was convicted of Attempted Stock Theft read with section 1 and 11(1)(a) of the Stock Theft Act (Act 12 of 1990) as amended of one goat valued at N\$450-00 and sentenced as follows:

*“One thousand Namibian dollars Fine (N\$1000-00) or in default of payment twelve (12) months imprisonment wholly suspended for a period of three (3) years on condition that*

*the accused is not convicted of Attempted Stock Theft in contravention of Sec. 11(1)*

*or Stock Theft in contravention of Sec. 11 of Act 12 of 1990 during the period of suspension.”*

[2] Mainga J (as he then was) directed the following enquiry to the learned magistrate:

- “1. Is the sentence imposed not incompetent in the light of the fact that the Stock Theft Act makes provision for a minimum sentence of 2 years where the value of the animal is less than N\$500,00;*
- 2. The sentence in this case too, omits the word committed – doesn’t that omission render the sentence useless. (See a similar query elsewhere in your case nos 314/09 and 10/2010.*
- 3. In the reasons for sentence, the magistrate is referring to the penal provisions of Section 15. Was accused not convicted for contravening Section 11(1), as amended?”*

The learned magistrate replied as follows:

*“I concur with the Honourable Reviewing Judge that the accused was indeed convicted of contravening Section 11(1) and the correct sentence to be imposed was the mandatory minimum sentence of 2 years where the value is less than N\$500-00 in terms of Section 14 of act 19 of 2004, and thus the sentence that was imposed is an **incompetent sentence**. The reason this sentence was imposed was because I relied on the annexure that was used by the prosecutor when she read the charge and on the bottom of the plea annexure was the*

*penalty provision which stipulated N\$4000-00 or 2 years imprisonment.*

*I concur further with the Honourable Reviewing Judge that the word **COMMITTED** is omitted in the sentence and I concur that this renders the sentence useless.*

[3] I agree with the learned magistrate that the sentence cannot stand.

[4] In *casu* it does not appear from the record whether or not the magistrate before passing sentence considered whether substantial and compelling circumstances exist in this matter.

[5] In the result the conviction is confirmed, but the sentence is set aside. The matter is referred back to the learned magistrate to pass sentence afresh with due regard to the principles and guidelines set out in the unreported judgment of *Matheus Nakathingo v S* case CA 200/2007 delivered on 24 February 2011, a copy of which is forwarded separately herewith.

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**SWANEPOEL, J**

I agree

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**SIBOLEKA, J**