



NOT REPORTABLE

CASE NO.: CA 21/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

**SIMON PETRUS GANEB
APPELLANT**

and

**THE STATE
RESPONDENT**

CORAM: HOFF J et SIBOLEKA, J

Heard on: 28 October 2011

Delivered on: 28 October 2011 *(Ex tempore)*

JUDGMENT

HOFF J: [1] Yes the Appellant in this matter appeals against the sentence imposed in the Magistrate's Court on the 10th January 2006 where he received a sentence of 10 (ten) years imprisonment for stock theft. Although he has been

convicted of another or a second offence, his appeal only lies against the imposition of the period of 10 (ten) years imprisonment.

[2] It is common cause that subsequent to the imposition of this sentence, the matter was sent on special review where the review Judges confirmed the convictions as well as the sentences. The convictions and sentences in respect of the two co-Accused of the Appellant were set aside, due to the fact that the relevant part of the record relating to them were missing.

[3] Mr Eixab, who appears on behalf of the Respondent raised a point *in limine* that there is no indication on the papers filed that the Appellant filed his Notice of Appeal within the prescribed period of 14 (fourteen) days after he had been sentenced.

[4] The Appellant insisted that his Notice of Appeal was filed on the 16th January 2006, well within the mentioned period of 14 (fourteen) days. The Appellant has also provided the Court with copies of documents from the Ministry of Justice and in particular from the Clerk of the Court of Omaruru where his case was finalized. One of these documents appears to be a record kept by the Clerk of the Court of appeal and review matters sent for transcription, where the proceedings have been mechanically recorded. This document bears the date stamp of 13 January 2006. Another document attached to this document indicates that matter involving the appellant and two others apparently had been finalized on the 10 January 2006 and then there also appears in the next column the date of 13 January 2006. This document also contains information regarding other accused persons. Next to the date of 13 January 2006 appears a star and the information further reveals the following. Those with stars were appeals. The appellants were awaiting for their cases to appear in the High Court. The

accused person must be given the benefit of the doubt that his notice of appeal has indeed been filed within the prescribed period. The appellant submitted that the prescribed sentence to be imposed would exceed the jurisdiction of the magistrates' court.

[5] Mr Eixab who appears on behalf of the Respondent in this matter agrees with this submission.

[6] In the result the following order is made:

1. This matter is referred back to the Magistrate's Court, Omaruru.
2. The Magistrate is ordered to consider afresh which appropriate sentence to impose.
3. Should the Magistrate be of the view that the appropriate sentence to be imposed in this matter exceeds the jurisdiction of the Magistrate's Court, the Magistrate should in terms of the provisions of Section 114 of the Criminal Procedure Act 51 of 1977 refer the matter for the purpose of sentencing to the Regional Court.
4. The Regional Court in turn, if the matter is so referred to that Court, in considering an appropriate sentence should take into account the period that the Appellant had served.
5. The Magistrate or the Regional Magistrates may however only do so once it is clear from evidence presented that the appellant has started to serve a period of imprisonment in respect of the sentence imposed by the Magistrate's Court in this matter.

HOFF J

I agree

SIBOLEKA, J

ON BEHALF OF THE APPELLANT:

In

Person

Instructed by :

ON BEHALF OF THE RESPONDENT:

Adv.

Eixab

Instructed by:

Office of the Prosecutor

General