

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 71/2013

In the matter between:

THE STATE

and

SITEMO MATHEUS HAINGURA

ACCUSED

Neutral citation: *S v Haingura* (CR71/2013)[2013] NAHCMD 310 (31 October 2013)

Coram: SIBOLEKA J and CHEDA J

Delivered: 31 October 2013

Fly note: Criminal Law – Punishment falls within the discretion of the trial court. As long as the discretion is judicially, properly and reasonably exercised, this court will not interfere with the sentence imposed.

Summary: After questioning in terms of section 112(1)(b) of Act 51 of 1977 as amended, the 19 year old sickly first offender was convicted for theft of one goat

valued at N\$500. Despite the above coupled with the fact that the sheep was recovered and the accused prayed for a sentence with an alternative of a fine, he was nonetheless given an effective goal term of two years imprisonment.

Held: The sentence is shockingly severe and cannot be allowed to stand especially given the fact that mandatory sentences in stock theft matters no longer apply.

ORDER

The sentence of two years imprisonment is set aside and substituted with the one of: Twelve (12) months imprisonment wholly suspended for five years on condition that the accused is not convicted, of theft committed during the period of suspension.

REVIEW JUDGMENT

SIBOLEKA J (CHEDA J concurring):

[1] The 19 year old accused appeared in the Magistrate's Court, Rundu on a charge of theft of 2 goats valued at N\$1 000. The plea that he tendered has not been properly recorded, however I will accept it was that of guilty given the questions and answers that followed in terms of section 112(1)(b) of Act 51 of 1977 as amended. He was eventually convicted for theft of one goat valued N\$500, which was recovered.

[2] In her reasons for sentence the Magistrate explicitly stated that the accused is a first offender and sickly person. She also acknowledged that the accused prayed for a sentence coupled with a fine. She however mistakenly added in her reasons that accused was convicted for the theft of two goats as per charge sheet, contrary to her own "verdict: Guilty – one goat". Despite the above the Magistrate proceeded to sentence the accused to an effective term of two years imprisonment.

[3] Imprisonment is justified only if the offender needs to be removed in order to protect society and if the purposes of punishment cannot be achieved through any other punishment. If the same objects of punishment can be achieved through an alternative sentence, that alternative sentence should be preferred. (See *S v Scheepers* 1977 (2) SA 155 (A) at 159 A-D).

[4] In the circumstances of the matter the sentence is shockingly excessive and cannot be allowed to stay.

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

The conviction of theft for one goat valued at N\$500 is confirmed.

The sentence of two years is set aside and substituted with the following:

Twelve months imprisonment wholly suspended for five years on condition that the accused is not convicted of theft, committed during the period of suspension.

A M SIBOLEKA

Judge

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M CHEDA
Judge