

Flynote: Criminal Court – A magistrate is allowed to send a case for review in order to have a mistake in the sentence it has imposed corrected accordingly.

Summary: The accused appeared in the Magistrate's Court, Outjo on a charge of Stock Theft c/s 11 (1) a of the Stock Theft Act 12 of 1990 as amended. He pleaded guilty and the case was finalised in terms of s 112 (1)(b) of the Criminal Procedure Act 51 of 1977 as amended, whereafter the learned magistrate proceeded to impose a sentence of 24 months imprisonment of which 12 months is wholly suspended for a period of 5 years on condition that the accused is not convicted of theft of stock committed during the period of suspension.

ORDER

24 Months imprisonment of which 12 months imprisonment are suspended for a period of 5 years on condition that the accused is not convicted of theft of stock, committed during the period of suspension.

The sentence is ante dated to 11 May 2016.

REVIEW JUDGMENT

USIKU J, (SIBOLEKA J concurring)

[1] The accused appeared in the Magistrate Court Outjo on a charge of theft of stock. He pleaded guilty and after questioning in terms of s 112 (1)(b) of Act 51 of 1977 he was convicted and sentenced as hereunder:

24 months imprisonment of which 12 months is wholly suspended for a period of 5 years on condition that the accused is not convicted of theft of stock committed during a period of suspensions.

[2] When the matter came before me for review I directed the following query to the magistrate “Can the learned magistrate explain what she meant by “24 months imprisonment of which 12 months is wholly suspended as the sentence is not clear?” The learned magistrate responded to the query as follows: The correct sentence is as follows: 24 months imprisonment of which 12 is suspended for a period of 5 years on condition that the accused is not convicted of theft of stock, committed during the period of suspension. Indicating further that it was a complete oversight on her side and apologised for the error.

[3] Indeed the sentence imposed by the learned magistrate was not clear and thus could not be allowed to stand. It is the duty of the Court sentencing an accused to ensure that the sentence is clearly understood. In the instant case one could not make out which part of the sentence was suspended by the learned magistrate.

[4] As a result the sentence is set aside and replaced with the following sentence 24 months imprisonment of which 12 months imprisonment are suspended for a period of 5 years on condition that the accused is not convicted of theft of stock, committed during the period of suspension.
The sentence is ante dated to 11 May 2016.

D N USIKU
Judge

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A SIBOLEKA

Judge