

<p>Case Title: <i>The State v Ricardo Rooi</i> <i>The State v Rowan Hanse</i></p>	<p>Case No: CR 17/2020</p>
<p>High Court MD Review No: 2417/2019 2418/2019</p>	<p>Division of Court: Main Division</p>
<p>Heard before: Mr Justice Liebenberg <i>et</i> Mr Justice Sibeya (<i>Acting</i>)</p>	<p>Delivered on: 25 March 2020</p>
<p>Neutral citation: <i>S v Rooi</i> (CR 17/2020) [2020] NAHCMD 113 (25 March 2020)</p>	
<p>The order:</p> <ol style="list-style-type: none"> a) The convictions are confirmed. b) The sentences are set aside and the fines, if paid, to be refunded. c) The matters are remitted to the magistrate's court sitting in the district of Keetmanshoop for sentencing afresh. d) The sentencing court must have regard to any period already served by the accused persons. 	
<p>Reasons for order:</p>	
<p>LIEBENBERG J (concurring SIBEYA, AJ)</p> <ol style="list-style-type: none"> 1. These are review matters brought in terms of s 302 (1) of the Criminal Procedure Act 51 of 1977 (the CPA) as amended. 2. The accused persons stole one sheep to the value of N\$1500 and were charged with the offence of stock theft r/w with s 11(1)(a) of the Stock Theft Act, 12 of 1990 (the Act), as amended. They pleaded guilty and were questioned in terms of section 112(1)(b) of the CPA. Consequently, they were convicted on the strength of their guilty pleas and sentenced, respectively, to a fine of N\$8000 	

or, in default of payment, to 12 months' imprisonment of which N\$6000 or 8 months' imprisonment being

suspended for a period of five years, on condition that the accused is not convicted of stock theft, committed during the period of suspension.

3. The convictions are in order but the sentence imposed in each case is not in accordance with justice. To this end, the court sent a query to the magistrate, in both matters, enquiring on what authority the magistrate acted when she imposed sentences of fines in stock theft cases. She replied to the queries indicating that she was misguided by the penalty clauses inserted in the charge by the state and furthermore that the Act had been amended to exclude the option of a fine. She therefore asked for the setting aside of both the sentences.

4. Section 14(1) of the Act reads as follows:

'Any person who is convicted of an offence referred to in section 11(1)(a), . . . that relates to stock other than poultry –

(a) of which the value-

- i. is less than N\$500, shall be liable in the case of a first conviction, to imprisonment for a period not less than two years without the option of a fine;
- ii. is N\$500 or more, shall be liable in the case of a first conviction, to imprisonment for a period not less than twenty years without the option of a fine '

Moreover, section 14 (2) of the Act states that 'if a court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in subsection (1)(a) or (b), it shall enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence.' Furthermore, as a result of *Daniel v Attorney-General and Others; Peter v Attorney-General and Others*¹ the court struck certain provisions out of section 14 of the Act as follows;

- (i) the words 'or a period not less than twenty years' are struck from s 14(1)(a) (ii) of the Act
- (ii) the words 'for a period not less than thirty years' are struck from s 14(1)(b)

¹ 2011 (1) NR 330 (HC).

of the Act.

To this end, s 14(1)(a)(ii) reads as follows now:

‘is more N\$500 or more, shall be liable in the case of a first conviction, to imprisonment without the option of a fine.’

5. Additionally the court in *S v Tjiveze*² also provided certain guidelines with regard to sentencing in stock theft cases. To this end the court noted that in cases where the value of the stock is N\$500 or more and the accused is a first offender the only requirement is that any sentence of imprisonment (not exceeding the normal sentence jurisdiction of the magistrate court) may be imposed. Whereas section 14(2) of the Act no longer applies, the court may wholly or partly suspend the period of imprisonment. Therefore, a court cannot impose a sentence of a fine in stock theft matters.
6. In the premises the sentencing proceedings falls to be set aside and both matters to be remitted to the court *a quo* to sentence the accused persons afresh and along the tenets of the authorities outlined above.
7. It is ordered;
 - a) The convictions are confirmed.
 - b) The sentences are set aside and the fines, if paid, to be refunded.
 - c) The matters are remitted to the magistrate's court sitting in the district of Keetmanshoop for sentencing afresh.
 - d) The sentencing court must have regard to any period already served by the accused persons.

J C LIEBENBERG
JUDGE

O SIBEYA
JUDGE

² 2013 (4) NR 949 (HC), see also *S v Lwishi* 2012 (1) NR 324 (HC).