

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTIVE 61

<b>Case Title:</b> State v Samuel Muranda and another	<b>Case No:</b> CR 85/2023
<b>High Court MD Review No:</b> 1126/2023	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Shivute J et January J	<b>Delivered on:</b> 28 July 2023
<b>Neutral citation:</b> <i>S v Muranda</i> (CR85/2023) [2023] NAHCMD 449 (28 July 2023)	
<b>The order:</b> <ol style="list-style-type: none"><li>1. Both sentences of the accused are set aside.</li><li>2. The matter is remitted in accordance with the provision in s 304(2)(c)(iv) of the CPA for the magistrate to sentence the accused persons afresh.</li><li>3. The magistrate is directed to consider the periods of imprisonment that both accused served after the initial sentencing.</li></ol>	
<b>Reasons for order:</b>	
JANUARY J (SHIVUTE J concurring):  [1] This review matter stems from the Grootfontein Magistrate Court and is submitted	

in terms of s 302(1) of the Criminal Procedure Act 51 of 1977, as amended (the CPA).

[2] The accused persons were charged and convicted of one count of contravening s 2 read with ss 1, 11(1)(a), 15 and 17 of the Stock Theft Act 12 of 1990, as amended (the Act)- possession of suspected stolen stock or produce, to wit: a carcass of a heifer with a value of N\$6000 to which there was a reasonable suspicion that it has been stolen and to which the accused persons were unable to give a satisfactory account for such possession.

[3] The two accused persons were sentenced respectively as follows; accused one; Three years' imprisonment of which 18 months are suspended for five years on condition that the accused is not convicted of any offence related to theft of stock committed during the period of suspension. Accused two; three years' imprisonment of which 24 months are suspended for five years on condition that the accused is not convicted of any offence related to stock theft of stock committed during the period of suspension.

[4] It is clear that the magistrate misdirected herself in applying s 14 of the Act providing for sentences in relation to theft of stock and not possession thereof or produce. I consequently raised a query to the magistrate, enquiring, how the sentences are justified, considering the prescribed sentences in the Act. The magistrate conceded that the sentence is inappropriate and should be set aside. She correctly stated the appropriate sentence falls within the provisions of s 15 of the Act which stipulates as follows:

**'15 Penalty where not otherwise provided for**

Any person who is convicted of an offence under this Act for which no penalty is otherwise provided shall be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment. '

[5] Consequently, the sentences are to be set aside and the matter to be remitted to the magistrate to sentence the accused persons afresh.

<p>[6] In the result:</p> <ol style="list-style-type: none"><li>1. Both sentences of the accused are set aside.</li><li>2. The matter is remitted in accordance with the provision in s 304(2)(c)(iv) of the CPA for the magistrate to sentence the accused persons afresh.</li><li>3. The magistrate is directed to consider the periods of imprisonment that both accused served after the initial sentencing.</li></ol>	
<p><b>H C JANUARY</b></p> <p><b>JUDGE</b></p>	<p><b>N N SHIVUTE</b></p> <p><b>JUDGE</b></p>