

REPUBLIC OF NAMIBIA

NOT REPORTABLE



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION
JUDGMENT

Case no: CA 19/2012

In the matter between:

CHRISTOF ATUTALA**APPELLANT**

and

THE STATE**RESPONDENT**

Neutral citation: *Atutala v The State* (CA 19/2012) NAHCNLD 48(5 August 2013)

Coram: DAMASEB, JP. *et* MILLER, J.

Heard on: 05 August 2013

Delivered on: 05 August 2013 (*ex tempore*)

ORDER

The Appellant is sentenced to five years imprisonment which is backdated to the 24th of March 2010 being the date upon which the Regional Magistrate sentenced the Appellant.

JUDGMENT

[1] The Appellant was charged, together with two others, with the crime of stock theft read with the provisions of the Stock Theft Act, 1990 (Act 12 of 1990) as amended. In essence the allegation was that the Appellant together with the others stole one head of cattle which was the property of a person not known to the State. All the Accused pleaded not guilty.

[2] The evidence tendered by the State in support of the charge was not seriously disputed. The evidence disclosed that members of the police acting upon information received proceeded to the house of the Appellant. They found him to be in possession of freshly slaughtered beef. The investigation took them to Accused no. 2 and 3 respectively in whose possession they also found freshly slaughtered beef. The police also recovered the skin and hoofs of a slaughtered cow. Nobody came forward to claim ownership of the animal.

[3] In his testimony the Appellant stated that the slaughtered cow was caught in a trap which he had set. He stated that he together with his co-Accused then slaughtered the animal because its leg had become swollen.

[4] The Appellant's co-Accused testified to the fact that the Appellant asked them to assist in slaughtering the animal which he said was his property. They agreed to assist and receive some meat for their efforts. The Learned Magistrate in a reasoned and comprehensive written judgment concluded that the Appellant was guilty of the offence charged. He concluded further that there was a reasonable possibility that the evidence of the Appellant's co-Accused was true and accordingly they were acquitted.

[5] Having convicted the Appellant the matter was referred to the Regional Court for sentencing. The Appellant subsequently appeared before the Regional Magistrate sitting at Outapi on the 24th of March 2010. Having heard factors

relating to mitigation the Learned Regional Magistrate concluded that there were no compelling and substantial circumstances as defined in the Act as it then read which warranted the imposition of a sentence less than the prescribed minimum sentence. He consequently sentenced the Appellant to 20 years imprisonment of which 15 years imprisonment were suspended on appropriate condition.

[6] The Appellant initially pursued an Appeal in person against both the conviction and the sentence. However he was represented today by Ms Nathaniel Koch and in terms of the document titled Notice of Withdrawal to Appeal the Appeal is pursued against the sentence only. The sole point relating to the sentence is that the prescribed minimum sentences in Act 12 of 1990 were struck down as unconstitutional by the High Court in the matter of *Daniel versus Attorney General and Others; Peter versus Attorney General and Others* 2011 (1) NR 330 HC.

[7] The State readily conceded that the sentence imposed by the Magistrate is an incompetent sentence in view of the fact that the prescribed minimum sentences have been struck down. I agree with that approach and will accordingly set aside the sentence imposed by the Regional Magistrate. It remains to consider what an appropriate sentence in the circumstances will be.

[8] It is true that the Appellant is a first offender. It is equally true that he has committed a serious offence. The theft of stock in a country where stock farming forms integral part of the economic activity in the country renders it particularly serious. Although the prescribed minimum sentences have been struck down by the High Court, the High Court did express itself to the effect that the offence is and remains a serious one.

[9] In these circumstances it appears to me that a sentence of five years imprisonment will be appropriate. The order that I make is as follows: The Appellant is sentenced to five years imprisonment which is backdated to the 24th

of March 2010 being the date upon which the Regional Magistrate sentenced the Appellant.

PJ Miller
Acting Judge

I agree

PT Damaseb
Judge-president

APPEARANCE:

APPELLANT

Of:

N Koch

Directorate of Legal Aid

RESPONDENT

Instructed by:

Mr Shileka

Office of the Prosecutor-General