

**REPUBLIC OF NAMIBIA**

**NON REPORTABLE**

**IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION  
JUDGMENT**

**Case no: CA 26/2012**

In the matter between:

**UAKENA**

**HEPUTE**

**APPELLANT**

and

**THE**

**STATE**

**RESPONDENT**

**Neutral citation:** *Hepute v The State* (CA 26/2012) [2013] NAHCNLD 62 (03 December 2013)

**Coram:** TOMMASI, J et MILLER, AJ

**Heard:** 03 December 2013

## ORDER

- a) The Application for Condonation is granted;
- b) The Appeal against conviction is dismissed;
- c) The Appeal against sentence is upheld.
- d) The sentence is set aside and substituted with the following sentence:  
The Accused is sentenced to three years' imprisonment and the sentence is ante-dated to the 26 of November 2007.

## JUDGMENT

TOMMASI, J (MILLER, AJ concurring):

[1 ] The appellant was convicted of theft of stock in that he stole one sheep valued at N\$ 600. He was sentenced to 20 years' imprisonment of which 10 years were suspended for five years on condition that he is not convicted of theft of stock read with the provisions of the Stock Theft Act 1990 (Act 12 of 1990), as amended, committed during the period of suspension. The appellant applied for condonation for lodging his appeal out of time and his application is not opposed by the respondent in view of the fact that this court may interfere with the sentence. Counsel for the appellant correctly conceded that there is no merit in the appeal against conviction. In view of the concession it is not necessary for this court to deal with the appeal against conviction in detail, suffice it to state that the court *a quo* correctly concluded that the State had proven its case beyond reasonable doubt.

[2] A minimum sentence of 20 years' imprisonment prescribed by the Stock Theft Act has been declared unconstitutional. In this case the sentence of 20 years for the theft of one sheep valued at N\$ 600 is shockingly inappropriate, thus entitling this court to interfere with the sentence. Remitting this matter for the appellant to be sentenced

afresh would be severely prejudicial to the appellant. Sufficient facts were placed on record and this court may under these circumstances impose an appropriate sentence.

[3] The Appellant was 19 years old at the time of the commission of the offence. He was single and had no children. He took care of his elderly grandmother and attended to a few livestock he possessed. No previous convictions were proven by State. His youthfulness and clean record are mitigating factors. The appellant, however, after having been caught red handed skinning the sheep became aggressive and drew a knife on a person who wanted to apprehend him. He showed no remorse for his actions. The seriousness and prevalence of the offence motivated the legislature to impose harsh minimum sentence in an effort to deter offenders. The fact that the minimum sentence has been declared unconstitutional does, however, not imply that lenient sentences should be imposed for stock theft. Weighing the mitigating and aggravating factors herein and considering the objectives of punishment, this court is of the view that a sentence of three years' imprisonment would be appropriate.

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

- a) The Application for Condonation is granted;
- b) The Appeal against conviction is dismissed;
- c) The Appeal against sentence is upheld.
- d) The sentence is set aside and substituted with the following sentence:  
The Accused is sentenced to three years' imprisonment and the sentence is ante-dated to the 26 of November 2007.

M  
Tommasi  
Judge

PJ  
Miller  
Acting

APPEARANCE

APPELLANT

GREYLING

OF

JAN GREYLING AND ASSOCIATES, OSHAKATI

RESPONDENT

LISULO

OF:

PROSECUTOR GENERAL, OSHAKATI