

Namibia

## Stock Theft Act, 1990

Act 12 of 1990

Legislation as at 28 December 2005

FRBR URI: /akn/na/act/1990/12/eng@2005-12-28

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PDF created on 9 July 2024 at 12:49.

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Republic of Namibia  
Annotated Statutes

## Stock Theft Act, 1990 Act 12 of 1990

Published in Government Gazette 63 on 28 August 1990

Assented to on 20 August 1990

Commenced on 28 August 1990

[This is the version of this document from 28 December 2005  
and includes any amendments published up to 5 July 2024.]

[Amended by Stock Theft Amendment Act, 1991 (Act 4 of 1991) on 14 May 1991]  
[Amended by Stock Theft Amendment Act, 1993 (Act 19 of 1993) on 1 October 1993]  
[Amended by Stock Theft Amendment Act, 2004 (Act 19 of 2004) on 20 December 2004]  
[Amended by General Law Amendment Act, 2005 (Act 14 of 2005) on 28 December 2005]

[Note that portions of section 14 were struck out and read down as a result of *Daniel v Attorney-General & Others*; *Peter v Attorney-General & Others* 2011 (1) NR 336 (HC), confirmed on appeal in *Prosecutor-General v Daniel & Others* (SA 15/2011) [2017] NASC 31 (28 July 2017).]

### ACT

To consolidate and amend the laws relating to the theft of stock and produce.

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

#### 1. Definitions

In this Act, unless the context otherwise indicates -

“**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

[definition of “**Criminal Procedure Act**” inserted by Act 19 of 2004]

“**Inspector-General**” means the Inspector-General of Police appointed under Article 32(4)(c)(bb) or Article 142 of the Namibian Constitution, as the case may be;

“**Minister**” means the Minister responsible for policing;

[definition of “**Minister**” amended by Act 19 of 1993 and Act 14 of 2005]

“**produce**” means the whole or any part of any skins, hides or horns of stock, and any wool, mohair or ostrich feathers;

“**public sale**” means a sale effected -

- (a) at any public market; or
- (b) by any shopkeeper during the hours when his or her shop may in terms of any law remain open for the transaction of business; or
- (c) by a duly licensed auctioneer at a public auction; or
- (d) in pursuance of an order of a competent court;

“**stock**” means any horse, mule, ass, bull, cow, ox, heifer, calf, sheep, goat, pig, poultry, domesticated ostrich, domesticated game or the carcase or portion of the carcase of any such stock;

“**sufficient fence**” means any wire fence, or any other fence, wall or hedge through which no stock could pass without breaking it, or any natural boundary through or across which no sheep would ordinarily pass.

## **2. Failure to give satisfactory account of possession of stock or produce**

Any person who is found in possession of stock or produce in regard to which there is reasonable suspicion that it has been stolen and is unable to give a satisfactory account of such possession, shall be guilty of an offence.

## **3. Absence of reasonable cause for believing stock or produce properly acquired**

Any person who in any manner, otherwise than at a public sale, acquires or receives into his possession from any other person stolen stock or stolen produce without having reasonable cause for believing, at the time of such acquisition or receipt, that such stock or produce is the property of the person from whom he acquires or receives it or that such person has been duly authorized by the owner thereof to deal with it or dispose of it, shall be guilty of an offence.

## **4. Entering enclosed land or kraal, shed, stable, or other walled place with intent to steal stock or produce**

Any person who in any manner enters any land enclosed on all sides with a sufficient fence or any kraal, shed, stable or other walled place with intent to steal any stock or produce on such land or in such kraal, shed, stable or other walled place, shall be guilty of an offence.

## **5. Delivery of stock or produce between sunset and sunrise**

Any person who for purposes of trade makes or accepts delivery between the hours of sunset and sunrise of any stock or produce sold or purchased or otherwise disposed of or acquired by him or her in any other manner than at a public sale, shall be guilty of an offence.

## **6. Document of identification to be furnished by person who disposes of stock**

- (1) Any person (including any auctioneer, agent or market master) who sells, barter, gives or in any other manner disposes of stock to any other person shall at the time of delivery to such other person of the stock so sold, bartered, given or disposed of, furnish such other person with a document (hereinafter referred to as a document of identification) -
  - (a) stating -
    - (i) his or her full name and address and, if the stock was sold, bartered, given or disposed of on behalf of some other person, also the name and address of such other person;
    - (ii) such particulars in regard to such stock as may be required to be stated therein in terms of any regulation made under section 19;

- (iii) the full name and address of the person to whom the stock was sold, bartered, given or disposed of;
  - (iv) the date on which the stock was sold, bartered, given or disposed of;
  - (b) certifying that such stock is his or her property or that he or she is duly authorized by the owner thereof to deal with or dispose of it.
- (1A) For the purposes of paragraph (b) of subsection (1), a person shall be deemed not to have complied with the provisions of that paragraph unless -
- (a) the employer, chief or headman of the person concerned or a deputy of such chief or headman or any member of a traditional council or authority or a representative of such chief, headman or council;
  - (b) a justice of the peace;
  - (c) a policeman of or above the rank of sergeant;
  - (d) a stock inspector;
  - (e) two residents of the neighbourhood in which the transaction takes place; or
  - (f) the person from whom such person purchased or acquired such stock if the first -mentioned person has a known or fixed address,

certifies that to the best of his or her or their knowledge and belief such person is entitled to dispose of or deal with such stock.

**[subsection (1A) inserted by Act 4 of 1991]**

- (2) No person to whom any stock has been sold, bartered, given or otherwise disposed of and to whom a document of identification is required to be furnished in terms of subsection (1) shall take delivery of such stock without obtaining such document at the time of delivery.
- (3) Any person to whom a document of identification has been furnished in terms of subsection (1) shall retain it in his or her possession for a period of at least one year.
- (4) Any person who has reasonable suspicion that an offence has been committed under this Act, may within the period referred to in subsection (3) demand from any person who is required in terms of subsection (1) to have in his or her possession a document of identification an inspection of such document, and upon such demand the person having possession of such document shall produce it for inspection to the person making the demand.
- (5) Any person who -
  - (a) contravenes or fails to comply with any provision of this section;
  - (b) fails to comply with any demand made under subsection (4); or
  - (c) wilfully makes any false statement in a document of identification,
 shall be guilty of an offence.
- (6) Any person who delivers any stock to an auctioneer, agent or market master for the purpose of sale or disposal in any other manner, shall, for the purposes of this section, be deemed to have disposed of such stock to such auctioneer, agent or market master.

## **7. Acquisition of stock or produce from persons whose places of residence are unknown**

- (1) Any person who in any manner (otherwise than at a public sale) acquires or receives into his possession, or any auctioneer, agent or market master who receives into his possession for the purpose of sale, from any person who has no known or fixed place of residence, any stock or

produce without obtaining at the time of delivery of such stock or produce to him a certificate, issued not more than thirty days before the delivery, from -

- (a) the employer, chief or headman of the person concerned or a deputy of such chief or headman or any member of a traditional council or authority or a representative of such chief, headman or council;
- (b) a justice of the peace;
- (c) a policeman of or above the rank of sergeant;
- (d) a stock inspector;
- (e) two residents of the neighbourhood in which the transaction takes place; or
- (f) the person from whom such person purchased or acquired such stock or produce if the first-mentioned person has a known or fixed address,

giving a description of the stock or produce and certifying that to the best of his or her or their knowledge and belief such person is entitled to dispose of or deal with such stock or produce, shall be guilty of an offence.

- (2) Any person who has obtained such a certificate shall retain it in his or her possession for a period of at least one year.
- (3) Any person who has reasonable suspicion that an offence has been committed under this Act, may within the period referred to in subsection (2) demand from any person who is required in terms of subsection (1) to have in his or her possession a certificate referred to in that subsection an inspection of such certificate, and upon such demand the person having possession of such certificate shall produce it for inspection to the person making the demand.
- (4) Any person who fails to comply with the provisions of subsection (2) or any demand made under subsection (3) or who wilfully makes any false statement in a certificate referred to in subsection (1), shall be guilty of an offence.

**[subsection (4) amended by Act 4 of 1991]**

## **8. Stock or produce driven, conveyed or transported on or along public roads**

- (1) No person shall drive, convey or transport any stock or produce of which he or she is not the owner on or along any public road unless he or she has in his or her possession a certificate (hereinafter referred to as a removal certificate) issued to him or her by the owner of such stock or produce or the duly authorized agent of such owner, in which is stated -
  - (a) the name and address of the person who issued the certificate;
  - (b) the name and address of the owner of such stock or produce;
  - (c) such particulars in regard to such stock or produce as may be required to be stated therein in terms of any regulation made under section 19;
  - (d) the place from which and the place to which such stock or produce is being driven, conveyed or transported;
  - (e) the name of the driver, conveyer or transporter;
  - (f) the date of issue thereof; and
  - (g) if applicable, the registration number, model and make of the vehicle with which the stock or produce is being conveyed or transported:

Provided that the provisions of this subsection shall not apply in respect of any stock or produce which is being driven, conveyed or transported, with the consent of the owner thereof or his or her

duly authorized agent, on or along such portion of any public road as traverses land which belongs to or is occupied by such owner or agent.

- (2) No person shall cause or permit any stock or produce of which he or she is the owner to be driven, conveyed or transported by any other person on or along any public road without furnishing him or her with a removal certificate which he or she is required to have in terms of subsection (1).
- (3) Any justice of the peace, policeman, or owner, lessee or occupier of land may demand from any person who is required in terms of subsection (1) to have in his or her possession a removal certificate, an inspection of such certificate, and upon such demand the person having possession of such certificate shall produce it for inspection to the person making the demand.
- (4) No person who is or was employed by an owner or occupier of any land shall remove any stock or produce owned by him or her or under his or her control from any land owned or occupied by such owner or occupier unless he or she is in possession of a document furnished by such owner or occupier, the agent of such owner or occupier, or a policeman on a date not more than seven days before the removal, which date shall be stated in the document, giving a description of such stock or produce and certifying that he or she was to the best knowledge and belief of the person furnishing the document entitled to remove such stock or produce on the said date.
- (5) Any owner or occupier of land, or any agent of such owner or occupier, shall, when requested to do so by any person who is or was in the employ of such owner or occupier and who is in possession on land owned or occupied by such owner or occupier of any stock or produce which he or she desires to remove therefrom, forthwith furnish him or her with any document which he or she may require in terms of subsection (4).
- (6) Any person who has obtained a document referred to in subsection (4) shall retain it in his or her possession for a period of at least one year.
- (7) Any justice of the peace, policeman, or owner, lessee or occupier of land may within the period referred to in subsection (6) demand an inspection of such document, and upon such demand the person having possession of such certificate shall produce it for inspection to the person making the demand.
- (8) Any person who -
  - (a) contravenes or fails to comply with any provision of this section;
  - (b) fails to comply with any demand made under subsection (3) or (7);
  - (c) wilfully makes any false statement in a removal certificate or a document furnished in terms of subsection (5); or
  - (d) falsely declares that he or she is the owner of stock or produce which is being driven, conveyed or transported by him or her on or along any public road,shall be guilty of an offence.
- (9) For the purposes of subsections (1), (2) and (8)(d) "owner" shall include any person who obtained stock or produce by virtue of an agreement of sale in terms of which any such person does not become the owner of such stock or produce merely by virtue of the delivery to him or her of such stock or produce.

## 9. Arrest and search without warrant

- (1) Subject to the provisions of Article 11(2) and (3) of the Namibian Constitution, any person may, without warrant, arrest any other person upon reasonable suspicion that such other person has committed the offence referred to in section 2 or 4.
- (2) Whenever any justice of the peace, policeman, or owner, lessee or occupier of land has reasonable grounds for suspecting that any person has in or under any receptacle or covering or in or upon any vehicle any stock or produce in regard to which an offence has been committed under this Act, such

justice of the peace, policeman, owner, lessee or occupier may in any case where delay in obtaining a warrant to search any such receptacle, covering or vehicle carries with it the danger of prejudicing the objects of the search and if -

- (a) such search is related to the objectives of this Act;
- (b) such search is not excessively intrusive in the light of the offence; and
- (c) such person is informed of the objectives of the search,

without warrant search such receptacle or vehicle and remove such covering, and if such justice of the peace, policeman, owner, lessee or occupier thereupon finds any stock or produce in regard to which he or she reasonably suspects an offence to have been committed, he or she may, subject to the provisions of Article 11(2) and (3) of the Namibian Constitution, without warrant arrest such person and seize such vehicle or receptacle and shall as soon as possible convey or bring such person and the stock or produce so found and the vehicle or receptacle so seized to a police station or charge office, as the case may be.

- (3) To the extent that the provisions of this section authorize the interference with the privacy of a person's home or the deprivation of the personal liberty of such person by conducting any search or making any arrest under those provisions, as the case may be, such interference or deprivation shall be authorized only -
  - (a) in the case of such interference, on the grounds of the prevention of crime and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution; or
  - (b) in the case of such deprivation, on the grounds of the procedures established under this section within the meaning of Article 7 of that Constitution.

**[subsection (3) amended by Act 4 of 1991]**

## **10. Malicious arrest and search**

- (1) Any person who, purporting to act under this Act, wrongfully and maliciously or without probable cause arrests or seizes the property of or under the control of any other person or effects any search, shall be guilty of an offence.
- (2) Nothing in this section contained shall be construed as taking away or diminishing any civil right or liability in respect of a wrongful or malicious arrest.

## **11. Verdicts on a charge of theft of stock or produce**

- (1) Any person who is charged with the theft of stock or produce may be found guilty of -
  - (a) the theft of or an attempt to commit the theft of such stock or produce; or
  - (b) receiving such stock or produce knowing the same to have been stolen; or
  - (c) inciting, instigating, commanding or conspiring with or procuring another person -
    - (i) to steal such stock or produce; or
    - (ii) to receive such stock or produce; or
  - (d) knowingly disposing of, or knowingly assisting in the disposal of, stock or produce which has been stolen or which has been received with knowledge of it having been stolen; or
  - (e) contravening section 2 or 3.
- (2) Any person charged with the theft of stock or produce belonging to a particular person may be found guilty of any of the offences mentioned in subsection (1), notwithstanding the fact that the

prosecution has failed to prove that such stock or produce actually did belong to such particular person.

## 12. Act applicable in all cases where charge is one of theft of stock or produce

The provisions of this Act shall apply in every case where an accused is indicted, summoned or charged in respect of the theft of stock or produce, notwithstanding the fact that this Act is not referred to in the indictment, summons or charge.

### 12A. \*\*\*

[section 12A inserted by Act 4 of 1991 and deleted by Act 19 of 1993]

### 13. \*\*\*

[section 13 deleted by Act 4 of 1991]

## 14. Penalties for certain offences

- (1) Any person who is convicted of an offence referred to in section 11(1)(a), (b), (c) or (d) 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;
  - (b) shall be liable in the case of a second or subsequent conviction, to imprisonment for a period not less than thirty years without the option of a fine.
- (2) 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) subsection (1)(a)(i), it shall enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence.
- (3) A sentence of imprisonment imposed in respect of an offence referred to in section 11(1)(a), (b), (c) or (d), or an additional sentence of imprisonment imposed under section 17(1)(b) in respect of non-compliance with an order of compensation, shall, notwithstanding anything to the contrary in any law contained, not run concurrently with any other sentence of imprisonment imposed on the convicted person.
- (4) The operation of a sentence, imposed in terms of this section in respect of a second or subsequent conviction of an offence referred to in section 11(1)(a), (b), (c), or (d), shall not be suspended as

contemplated in section 297(4) of the Criminal Procedure Act, if such person was at the time of the commission of any such offence eighteen years of age or older.

[Section 14 was amended by Act 4 of 1991, substituted by Act 19 of 1993 and substituted by Act 19 of 2004 after S v Vries 1998 NR 244 (HC) struck out some portions of the previous version of section 14(1)(b) on constitutional grounds.]

[Portions of section 14 were struck out and read down as a result of Daniel v Attorney-General & Others; Peter v Attorney-General & Others 2011 (1) NR 336 (HC).]

[Although this holding was challenged on appeal, according to S v Huseb 2012 (1) NR 130 (HC) and S v Lwishi 2012 (1) NR 325 (HC), the declarations of constitutional invalidity were of full force and effect while the appeal was pending.]

[The High Court judgment was eventually confirmed on appeal in Prosecutor-General v Daniel & Others (SA 15/2011) [2017] NASC 31 (28 July 2017).]

## 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.

## 15A. Jurisdiction of magistrates' courts

Notwithstanding anything to the contrary contained in any other law -

- (a) a magistrate's court of a regional division shall have jurisdiction to impose any penalty or additional penalty provided for in this Act, even though the penalty may, either alone or together with any additional penalty imposed by the court, exceed the punitive jurisdiction of the court; and
- (b) a magistrate's court of a district or a regional division shall have jurisdiction to make any order under section 17 irrespective of the amount payable under that order.

[section 15A inserted by Act 19 of 1993 and substituted by Act 19 of 2004]

## 16. Previous convictions

On any conviction for an offence under this Act, a conviction for a corresponding offence under any law repealed by section 22(1) of this Act, shall be deemed to be a previous conviction under this Act.

## 17. Compensation for damage to, or loss of, stock

- (1) Where a person is convicted of an offence referred to in section 11(1)(a), (b), (c) or (d) that has caused loss or damage to another person, the court may, notwithstanding anything to the contrary in any other law contained, but subject to subsection (2), enquire into, and determine the extent of, the loss or damage suffered and, in addition to any sentence that it may impose on the convicted person in respect of the offence -
  - (a) order the convicted person to pay compensation to the person who has suffered such loss or damage; and
  - (b) in default of payment of such compensation, impose on the convicted person an additional sentence of imprisonment for a period not exceeding three years.
- (2) An order for compensation made under subsection (1) shall, notwithstanding anything to the contrary contained in the Criminal Procedure Act, be for such amount as the court may consider appropriate, but not exceeding the sum of the actual loss or damage suffered and loss or damage

arising from or in connection with or attributable to the offence in respect of which such order is made.

[section 17 substituted by Act 19 of 2004]

## **18. Establishment of Special Stock Theft Unit**

The Inspector-General may, for the better prevention and combat of stock theft, establish a Special Stock Theft Unit consisting of members of the Police Force in Namibia.

## **19. Regulations**

The Minister may make regulations as to -

- (a) the particulars to be stated in regard to stock in the document of identification referred to in section 6;
- (b) the particulars to be stated in regard to stock or produce in the removal certificate referred to in section 8; and
- (c) any other matter which in terms of any provision of this Act the Minister may deem necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

## **20. Provisions of Act may be made applicable in respect of farm produce not mentioned in definition of produce**

- (1) The Minister may by notice in the Gazette declare that any or all of the provisions of this Act relating to produce shall also apply, either generally or in any area specified in the notice or any area other than an area so specified, in respect of any such class of farm produce not mentioned in the definition of "produce" in section as is specified in the notice.
- (2) The Minister may in like manner amend or repeal any such notice.

## **21. Application of sections 5, 6, 7 and 8**

- (1) The Minister may by notice in the Gazette exclude from the operation of any or all of the provisions of sections 5, 6, 7 and 8 -
  - (a) any area specified in the notice or any area other than an area so specified; or
  - (b) any stock or produce or class of stock or produce either generally or in respect of any area specified in the notice or any area other than an area so specified.
- (2) The Minister may by notice in the Gazette, and on such conditions as he or she deems fit, exempt any person or class of persons specified in the notice, either generally or under such circumstances or in respect of such stock or produce or class of stock or produce as may be specified in the notice, from compliance with any or all of the provisions of sections 5, 6, 7 and 8.

## **22. Repeal of Ordinance 11 of 1935 and Act 23 of 1985, and saving**

- (1) Subject to the provisions of subsection (2), the Stock Theft Law Amendment Ordinance, 1935, and the Stock Theft Law Amendment Act, 1985, are hereby repealed.
- (2) Notwithstanding the repeal of any law by subsection (1), such law shall, for the purposes of any charge in any criminal proceedings for any offence which any person has, before the commencement of this Act, committed and any penalty in relation thereto, remain in force as if the provisions of this Act had not been passed.

**23. Short title**

This Act shall be called the Stock Theft Act, 1990.