

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

1. FREDDIE KAMU-GAIB

2. GERHARD KAMU-GAIB

(HIGH COURT REVIEW CASE NO. 593/06)

CORAM: HOFF *et* VAN NIEKERK, JJ

Delivered: 2006-05-17

REVIEW JUDGMENT

VAN NIEKERK, J:

The Regional Court Magistrate at Tsumeb referred this matter for special review. In his accompanying letter the learned magistrate explains that the case of the two accused was referred to him for sentence in terms of section 114(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977). They were convicted after a plea of guilty to a charge of theft of stock, namely one ox to the value of N\$2800-00, under the Stock Theft Act, 1990 (Act 12 of 1990), as amended and

sentenced to twenty years imprisonment. The learned regional magistrate points out that he omitted to explain the provisions of section 14 of Act 12 of 1990, as amended, to the accused. More particularly, he says he did not explain the fact that the accused were facing a minimum sentence of twenty years without the option of a fine and that if substantial and compelling circumstances exist which justify the imposition of a lesser sentence, the court may impose a lesser sentence. In his view the accused did not have a fair trial as far as sentence is concerned and he requests this Court to set aside the sentence he imposed in order for him to explain the relevant provisions properly to the accused so that they might avail themselves of the opportunity to place such circumstances before him.

I agree that this should be done. (See *Levi Gurirab versus The State* (High Court Appeal Judgment - Case No. CA 190/2004, delivered on 12/7/2005).

I also wish to point out to the learned magistrate that, as the two accused are first offenders, it would also be open to him in the exercise of his discretion to suspend part of the twenty years imprisonment even if there are no substantial and compelling circumstances justifying the imposition of a lesser sentence (see

section 14(4) of Act 12 of 1990, as amended, read with section 297(4) of Act 51 of 1977). (*The State versus Kavii Gawie Katjirora (2)* (High Court Review Judgment - Case No. CR 98/05, delivered on 25/8/2005) at p4; *The State versus Itembu Ngauyile* (High Court Review Judgment - Case No. CR119/2005 delivered on 8/12/2005) at p3-4).

In the result the following order is made:

1. The convictions are confirmed.
2. The sentences in respect of both accused are set aside.
3. The matter is remitted to the regional magistrate to sentence the accused afresh.

VAN NIEKERK, J

I agree,

HOFF, J