

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

1. SHIMBWALE KASMIA

2. NAURE TJIPITO

(HIGH COURT REVIEW CASE NO.: 419/05)

CORAM: VAN NIEKERK, J et SILUNGWE, AJ

Delivered on: 2007-03-29

REVIEW JUDGMENT:

VAN NIEKERK, J:

[1] The two accused were convicted by the Magistrate, Opuwo on a charge of housebreaking with intent to steal and theft of cash and goods to the value of ±N\$4 220 stolen from a shop, most of which were not recovered. I am satisfied that the conviction is in order.

2

[2] The magistrate sentenced the accused to 8 years imprisonment of which 3 years were suspended for 5 years on the usual condition. The sentence clearly exceeds the ordinary penalty jurisdiction of a magistrate's court in a case like this, which is, in the case of imprisonment, a maximum period of 5 years imprisonment. The sentences can therefore not stand.

[3] The personal circumstances of the accused as stated by themselves are that accused no. 1, who was about 28 years old, has a girl friend and four children. He volunteered information that he was serving a number of sentences totaling seven years for various crimes, but no previous convictions were proved. Before he went to prison he had 10-11 goats. Accused no. 2, who was about 27 years old of age, had a girlfriend and two children. He was unemployed, had no money for a fine and no live stock.

The loss sustained by the complainant is considerable. The evidence also shows that a window, a door and burglar bars were broken in order to gain access to the shop, thereby adding to his damages.

3

[4] I agree with the trial magistrate that an appropriate sentence in the circumstances of this case would be a substantial period of imprisonment of which part is suspended.

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

1. The convictions of both accused are confirmed.
2. The sentences of both accused are set aside and substituted by the following sentence:
 - 4 (four) years imprisonment of which (one) year is suspended for 5 (five) years on condition that the accused is not convicted of housebreaking with intent to steal and theft committed within period of suspension.

VAN NIEKERK, J

I agree

SILUNGWE, AJ