

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

GUSTAV LUCAS

(HIGH COURT REVIEW CASE NO.:1030/2007)

CORAM: MULLER, J et FRANK, AJ

Delivered on: 03 June 2008

REVIEW JUDGMENT

MULLER, J.:

[1] The accused was charged with theft of stock, to wit one heifer valued at N\$3000.00. He pleaded not guilty, but was convicted and sentenced to 3 years imprisonment.

[2] The proceedings was recorded and I was provided a part of the transcribed record for the purpose of review. I queried the magistrate in regard to the incompleteness of the record and whether the offence was proved. The magistrate initially responded only to the latter query. Consequently, I repeated my query in respect of the incomplete record on 11 April 2008 as follows:

“The Honourable Reviewing Judge remarks as follows:

The second query was not responded to at all. Unless the record is provided

to me I cannot review this case, in particular the sentence part. Please respond urgently."

The following is the magistrate's unedited response:

"The magistrate remarks as follows:

Page 40 of the transcribing record shows that the records end with indistinct in the two words judgment.

There is no report from the transcribing office as to why the judgment and the preceding proceedings were not transcribed.

The magistrate is unable to reconstruct the end of the proceedings.

I thus ask that the proceedings be quashed due to the ineffective recording.

The handwritten notes I kept together with the cassettes in the envelope. They are not available as the cassettes were sent in for transcription."

[3] The transcribed record ends on page 40, just before the judgment by the court. It appears from the remarks of the magistrate that he is unable to reconstruct *"the end of the proceedings"*. I accept that to be from page 40 onwards. In the light thereof and the fact that the tapes on which the proceedings were recorded apparently disappeared, there is no basis to determine whether the conviction was in accordance with justice. When initially perusing the record, I entertained doubts whether all the elements of the charge had been proved. The magistrate is unable to assist in this regard and suggests that the conviction be *"quashed,"* or set aside.

[4] As the matter now stands, I cannot certify that the proceedings were in accordance with justice. From the judgment to the imposing of the sentence there apparently exist no record and neither can

the magistrate reconstruct the proceedings.

[5] In the result, the conviction and sentence of the accused are set aside.

MULLER, J

I concur

FRANK, AJ