



**CASE NO. CR 102/09**

**Not Important**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**JACKSON TJIPURA**

**ACCUSED**

(HIGH COURT REVIEW CASE NO.: 388/09)

**CORAM:** NDAUENDAPO, J *et* SIBOLEKA, J

**DELIVERED:** 28 September 2010

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**SPECIAL REVIEW JUDGMENT:**

**NDAUENDAPO, J:** [1] This matter came before me on special review.

[2] The accused was charged and convicted on two counts of stock theft (Act 12 of 1990 as amended by Act 19 of 2004) in the magistrate's court of Gobabis.

[3] In respect of count 1, the allegations were that he stole three cows valued at N\$9000-00 the property or in the lawful possession of Nicolaas Tjikutu.

[4] In respect of count 2 it is alleged that he stole five heifers valued at N\$12 000-00 the property or in the lawful possession of Stephanus Kamuhinandira.

[5] The matter was transferred to the regional court for purposes of sentencing in terms of section 116(1)(a) of Act 51 of 1977.

[6] The regional court magistrate having perused the record, was not satisfied that the proceedings in the court *a quo* were in accordance with justice and declined to sentence the accused and referred the matter for special review.

[7] In the letter annexed to the record, he succinctly sets out the reasons why the proceedings were not in accordance with justice.

[8] The letter states:

*"Accused was convicted of two counts of theft of stock taking into consideration  
The provisions of the stock theft Act (Act 12 of 1990).*

*The case was transferred to the Regional court in terms of Section 116(1)(a) of Act 51 of 1977 for sentence purposes.*

*This court is not satisfy that the proceedings are in accordance with Justice and is therefore not in a position to sentence accused.*

*The allegations in count 1 are that accused stole 3 cows the property or in the lawful possession of Stephanus Kamuhinandina.*

*Niklaas Tjikukutu testified that he identified only one of the missing cattle at the place of witness Anton Cleff Tjizake. Stephanus Kamuhinandra testified that he identified three of the missing cattle at the place of witness Anton Cleff Tjizake.*

*Witness Anton Cleff Tjizake confirmed that evidence and testified that he received these cattle from accused 1. The evidence of witness Anton confirmed by the evidence of witness Nicklaus Mbango were direct evidence implicating accused 1 of being in possession of four cattle one of witness Niklaas Tjikukutu and three of witness Stephanus Kamuhinandra.*

*On record is (sic) no evidence proving that accused also took the other cattle as indicated on the annexure to the charge sheet.*

*The magistrate however convicted accused as charged with the result that accused was convicted of theft of three cows on count 1 and 5 heifers on count 2.*

*The magistrate probably drew the inference from accused possession of four cattle and he also stole the rest of the cattle. Indicated on the annexure to the charge sheet which was not the only inference to be drawn from the proven facts.*

*In **Blom 1939 AC 188** it was stated that the inference to be drawn must be consistent with all the proven facts.*

*The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.*

*In **S v Mseleku 2006 (2) SACR 574 (D)** the court stated that a reasonable inference can only be drawn from proved facts not from facts based on suspicion.*

*Accused should have been convicted of theft of only one cow in respect of count 1 and three heifers in respect of count 2.*

*The record is forwarded to your office in terms of Section 116(3)(a) of Act 51/77.*

[9] Having perused the record, I fully agree with the magistrate and the conviction is set aside and substituted with the following:

1. On count 1, the accused is convicted of theft of one cow to the value of N\$ 2 000,00;
2. On count 2, the accused is convicted of theft of three cows valued at N\$ 9 000,00;
3. The matter is referred back to the Regional Court for sentencing.

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**NDUAENDAPO, J**

I agree

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**SIBOLEKA, J**