



## HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

## JUDGMENT

Case no: CR 4/2014

In the matter between:

**THE STATE**

and

**MBEUMUNA VEII****ACCUSED**

(HIGH COURT MAIN DIVISION REVIEW REF NO.: 1675/2013)

**Neutral citation:** *S v Veii* (CR 4-2013) [2014] NAHCMD 24 (29 January 2014)**Coram:** HOFF J and UNENGU AJ**Delivered:** 29 January 2014

**Flynote:** Criminal Procedure – Verdict of convicted as charged – Accused person convicted of a goat worth N\$250.00 than N\$600.00 alleged in charge sheet – Verdict replaced with guilty of theft of goat with a value of N\$250.00. Criminal Procedure – Sentence – Prescribed minimum sentence of two years imprisonment – section 11(1)(a)(i) of Stock Theft Act, 1990 (Act 12 of 1990) – Mandatory Magistrate does not have a discretion – A sentence of fifteen (15) months imprisonment *ultra vires*, therefore inappropriate.

**Summary:** An accused person who was charged with theft of a goat worth N\$600.00 was found guilty as charged even though the value of the goat accepted by the state was N\$250.00. On review, the verdict of 'guilty as charged' set aside and substituted with a verdict of 'guilty theft of a goat with a value of N\$250.00'.

The sentence of fifteen (15) months imprisonment imposed by the magistrate is set aside as the magistrate acted *ultra vires*. Section 11(1)(a)(i) of the Stock Theft Act, 1990 (Act 12 of 1990) provides for a minimum prescribed sentence of not less than two years imprisonment for first offenders convicted of theft of stock of which the value thereof is less than N\$500.00. The sentence is mandatory, a magistrate does not have a discretion. On review, the sentence of fifteen (15) months imprisonment imposed by the magistrate set aside and replaced with a sentence of two years imprisonment, antedated to 14 October 2013.

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### ORDER

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1. The verdict of 'guilty as charged' returned by the magistrate is set aside and substituted with a verdict of 'guilty theft of a goat with a value of N\$250.00'.
2. The sentence of 'fifteen (15) months imprisonment' imposed by the magistrate is set aside and replaced with a sentence of 'two years imprisonment'.
3. The sentence is antedated to 14 October 2013.

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### JUDGMENT

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UNENGU AJ (HOFF J concurring):

[1] In this review matter the accused was charged with theft of one goat with a value of N\$600.00 but was convicted of theft of a goat worth N\$250.00 only.

[2] The accused pleaded guilty to the charge and during the questioning by the learned magistrate, he told the magistrate that he stole the goat because he was very hungry. That despite, the magistrate found him guilty of theft of the goat, in my

view correct, because hunger is not a lawful defence to a crime of theft and punished the accused with fifteen (15) months imprisonment.

[3] However, I remitted the matter to the magistrate with a query reading amongst others as follows: 'Your verdict of 'guilty as charged' does it accord with the allegations in the charge sheet admitted by the accused, in particular if regard is had to the fact that he denied the value of the goat being N\$600.00', secondly 'is the sentence imposed in accordance with the provisions of section 11 (1)(a)(i) of Stock Theft Act, 1990 (Act 12 of 1990) as amended, in view of the fact the prosecutor accepted N\$250.00 as the value of the goat?'

[4] The learned magistrate did not give an answer why he convicted the accused as charged considering the fact that he convicted the accused of theft of a goat worth N\$250.00 only not N\$600.00 as alleged in the charge sheet.

[5] Be that as it may. The verdict of 'guilty as charged' returned by the magistrate is wrong and will be substituted with a verdict of 'guilty theft of a goat worth N\$250.00'.

[6] With regard the sentence imposed, the magistrate conceded that section 11(1)(a)(i) of the Stock Theft Act, 1990 (Act 12 of 1990) provides for a sentence of not less than two years imprisonment for first offenders convicted of theft of stock with a value of less than N\$500.00, like in the instant matter.

[7] The two years' imprisonment in section 11(1)(a)(i) of the Stock Theft Act, is mandatory. A magistrate does not have a discretion to impose a lesser sentence on a first offender convicted of theft of stock with a value of less than N\$500.00.

[8] In his reply, the magistrate indicated that the sentence of fifteen (15) months imprisonment he imposed on the accused was appropriate in his view, and two years imprisonment would be harsh considering that the value involved is only N\$250.00.

[9] His view is wrong. As already indicated the two years imprisonment is prescribed by law as a minimum sentence to be imposed on first offenders convicted

of theft of stock with a value of less than N\$500.00 That being the case, the magistrate acted *ultra vires*, therefore, the sentence is inappropriate and will be corrected.

[10] In the result, the following order is made:

1. The verdict of 'guilty as charged' returned by the magistrate is set aside and substituted with a verdict of 'guilty theft of a goat with a value of N\$250.00'.
2. The sentence of 'fifteen (15) months imprisonment' imposed by the magistrate is set aside and replaced with a sentence of 'two years imprisonment'.
3. The sentence is antedated to 14 October 2013.

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PE Unengu  
Acting

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E Hoff  
Judge