

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 39/2019

In the matter between:

THE STATE

v

JEFTA PETER KAHUURE

(HIGH COURT MAIN DIVISION REF. NO.: 578/2019)

(MAGISTRATE' SERIAL NO.: 8/2019)

Neutral citation: *S v Kahuure* (CR 39/2019) [2019] NAHCMD 162 (23 May 2019)

Coram: NDAUENDAPO J and SHIVUTE J

Delivered: 23 May 2019

Flynote: Criminal Procedure – Sentence – Stock theft s 11 (1)(a) of Stock Theft Act 12 of 1990 – Magistrate imposed fine– Section 14 (1)(a) of the Stock Theft Act does not provide for fines for stock theft – Sentence not competent – Matter remitted.

ORDER

- a. The conviction is confirmed.
 - b. The matter is remitted to the magistrate in terms of s 312 of the Criminal Procedure Act 51 of 1977 for the magistrate to sentence the accused afresh.
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JUDGMENT

SHIVUTE J (NDAUENDAPO concurring)

[1] The accused was convicted of stock theft (one goat) valued at N\$ 1500, contravening s 11(1), 14 and 17 of the Stock Theft Act 12 of 1990.

[2] He was sentenced to pay a fine of N\$ 1000 (one thousand Namibia dollars) or in default of payment to 12 months imprisonment wholly suspended for a period of three years on condition that the accused is not convicted of stock theft and/or possession of suspected stolen stock committed during the period of suspension.

[3] I directed a query to the learned magistrate, to indicate in terms of which provisions of the Act the court imposed a fine. The learned magistrate opined that the youthfulness of the accused, the fact that the accused person

pleaded guilty and showed remorse constitute compelling and substantial circumstances and he further indicated that he takes note of the mandatory provision of imprisonment therefore stands to be corrected. The conviction is in order and will be confirmed; however, the sentence is not.

[4] Section 11 (1) of the Act stipulates that any person convicted of stock theft is liable to a sentence of imprisonment only, see (*S v Lwishi* 2012 (1) NR 325 (HC) at 328C-E). The fine imposed is accordingly not competent and stands to be set aside.

[5] In the result, it is ordered that:

- a. The conviction is confirmed.
- b. The matter is remitted to the magistrate in terms of s 312 of the Criminal Procedure Act 51 of 1977 for the magistrate to sentence the accused afresh.

NN SHIVUTE
JUDGE

GN NDAUENDAPO
JUDGE