

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

<b>Case Title:</b> <i>The State v Petrus Immanuel</i>	<b>Case no:</b> CR 29/2022 TSU-CRM 257/2021
	<b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Mr Justice Munsu AJ <i>et</i> Honourable Mr Justice Kessler AJ	<b>Delivered on:</b> 27 June 2022
<b>Neutral citation:</b> <i>S v Immanuel</i> (CR 29/2022) [2022] NAHCNLD 64 (27 June 2022)	
<b>It is hereby ordered that:</b>  The conviction and sentence are confirmed.	
<b>Reasons for the order:</b>	
KESSLAU AJ (MUNSU AJ concurring):	
[1] The matter comes before this court on automatic review in terms of Section 302 of the Criminal Procedure Act 51 of 1977 as amended, (the CPA).	
[2] The accused in this matter was properly convicted in the Magistrates Court of Tsumeb upon a plea of guilty to a charge of theft of stock, read with the provisions of the	

Stock Theft Act 12 of 1990, as amended. The theft was of one female goat valued at N\$ 800. The accused was informed prior to his plea that a conviction on the said charge carries a direct term of imprisonment. The accused had no previous convictions. At the sentencing stage the magistrate referred to the part of the penalty clause applicable where the value is less than N\$ 500 and imposed direct imprisonment of two years.

[3] A query was directed to the learned magistrate regarding the application of the wrong penalty clause. In his reply the magistrate conceded to his error.

[4] Understandably the said penalty clause, after the amendment, can be confusing. The best explanation was stated in *S v Tjiveze*<sup>1</sup> which found as follows: 'To sum up, the position in relation to sentence for first offenders in terms of section 14 of the Stock Theft Act is as follows:

1. Cases where the value of the stock is less than N\$500, i.e. 'section 14(1)(a)(i) cases' and

the accused is a first offender

1.1 The prescribed sentence is any period of imprisonment for a period of not less than two years without the option of a fine, but not exceeding the normal sentence jurisdiction of the magistrate.

1.2 The court must explain section 14(2) to the accused and if satisfied that substantial and compelling circumstances exist, enter those circumstances on the record and may impose a lesser sentence than two years imprisonment, which must still be a period of imprisonment.

1.3 If the court finds that there are substantial and compelling circumstances it may impose a shorter period of imprisonment. The court may in its discretion also wholly or partly suspend any period of imprisonment imposed (see section 297(1) (b) of the CPA, read with paragraph [7] of the *Tjambiru*<sup>2</sup> judgment).

1.4 If the court is not satisfied that there are substantial and compelling circumstances, it must impose a sentence of at least two years imprisonment without the option of a fine, but it may suspend part of the sentence (see section 297(4) of the CPA, read with paragraph [3] & [6] of the *Tjambiru* judgment).

2. Cases where the value of the stock is N\$500 or more, i.e. 'section 14(1)(a)(ii) cases' and  
the accused is a first offender

<sup>1</sup> *S v Tjiveze* (CR 27-2013) [2013] NAHCMD 110 (24 April 2013) par 13

<sup>2</sup> *State v Mbahuma Tjambiru and two other cases* (Case No's CR 47/2008; CR 48/2008 & CR 49/2008) delivered on 21 July 2008

2.1 The prescribed sentence is any period of imprisonment without the option of a fine, but not exceeding the normal sentence jurisdiction of the magistrate.

2.2 Section 14(2) does not apply, i.e. the court is not concerned with substantial and compelling circumstances.

2.3 The court may wholly or partly suspend the period of imprisonment (see section 297(1)(b) of the CPA).'

[5] The situation as it stands is thus that an accused might receive a lesser sentence for the more serious offense when the penalty clause is considered in isolation. It is thus imperative that judicial officers do not lose sight of the principle of uniformity during sentencing. It was stated by Liebenberg J in *S v Vos*<sup>3</sup> that 'The principle of uniformity again concerns the court's approach where the same offence has been committed and the circumstances of the offender are more or less similar to other cases. In such instance the court should as far as possible endeavour to impose sentence in such way that the public can have confidence therein'. When applying the principle of uniformity and a measure of logic to the penalty clause provided for in the Stock Theft Act it follows that generally speaking the offense involving a higher value (more than N\$ 500) should not carry a lesser sentence<sup>4</sup>. It will however depend on the particular circumstances of each case whilst at the same time considering the aim of individualising the sentence.

[6] Returning to the matter at hand, the facts in this matter were that the animal was stolen and then slaughtered by the accused. The magistrate rightfully considered that the complainant in this case lost not only his goat but also the future offspring of the female animal and furthermore that the majority of the community rely on farming to sustain themselves. When comparing the sentence imposed with similar cases<sup>5</sup> it appears that the sentence imposed is reasonable.

[7] Considering the above, it appears that the proceedings are in accordance with

<sup>3</sup> *S v Vos* (CR 09/2016) [2017] NAHCMD 15 (30 January 2017)

<sup>4</sup> *S v Hamukwaya* (CR 6/17) [2017] NAHCNLD 61

<sup>5</sup> *S v Huseb* (CR 25-2015) [2015] NAHCMD 208 (8 September 2015); *Kauzuu v State* (CA 107/2013) [2014] NAHCMD 68 (28 February 2014); *S v van der Westhuizen* (CR 5/2020) [2020] NAHCMD 20 (24 January 2020); *S v Tjivinda* (CR 32 /2021) [2021] NAHCMD 215 (10 May 2021); *S v Tjiveze* (CR 27-2013) [2013] NAHCMD 110 (24 April 2013)

justice.

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

- a) The conviction and sentence are confirmed.  
1.

Judge(s) signature	Comments:
KESSLAU AJ:	None
MUNSU AJ:	None