



Case No.: CR54/2008

IN THE HIGH COURT OF NAMIBIA

In the matter between

THE STATE

versus

SAUL ABUSEMA

[HIGH COURT REVIEW CASE NO.: 769/08]

CORAM: PARKER, J *et* NDAUENDAPO, J

Delivered on: 2008 June 2

REVIEW JUDGMENT:

PARKER, J.:

[1] The accused was charged before the Gobabis Magistrate's Court on one count of theft (of a sheep), valued at N\$400.00, which takes into account the Stock Theft Act, 1990 (Act No. 12 of 1990) (the Act), as amended. The accused pleaded guilty and was convicted on his plea of guilty and sentenced to six months' imprisonment.

[2] The submission of the record for review was accompanied by a letter. In the letter, the learned Magistrate was of the view that the sentence imposed was wrong because he had deviated from the prescribed sentence in terms of s 14 (1) (a) (i) of Act No. 12 of 1990, as amended by s 2 of the Stock Theft Amendment Act, 2004 (Act No. 19 of 2004), without entering upon the record, as required by s 14 (2) of the Act, the “special and compelling circumstances” that justified the imposition of a sentence that is lesser than the prescribed sentence.

[3] I do not think the learned Magistrate was wrong. The offence in the instant case was committed on 2 August 2004, and, therefore, the sentence sanctioned by statute at that time is that found in s 14 of Act No. 12 of 1990, as amended by s 3 of the Stock Theft Amendment Act, 1993 (Act No. 19 of 1993), which came into force on 1 October 1993. As I observed in *Lethto Mungandjera v The State* Case No.: CA 170/2006 (Unreported), Act No. 19 of 1993 does not, unlike Act No. 19 of 2004 which came into force on 20 December 2004, prescribe minimum sentences; neither does that Act prescribe sentences according to the value of the stock stolen. Moreover, unlike Act No. 19 of 2004, Act 19 of 1993 does not mention the words “special and compelling circumstances” that would justify a departure from the statutorily prescribed sentences. The material part of s 3 of Act No. 19 of 1993 reads:

- (1) Any person who is convicted of an offence referred to in paragraph (a), (b), (c) or (d) of subsection (1) of section 11 shall be liable –
 - (a) in the case of a first conviction –
 - (i) to imprisonment for a period not exceeding 10 years; or
 - (ii) to a fine not exceeding R40,000; or
 - (iii) to both such fine and such imprisonment, or

(b) ...

[4] I have perused the record and I am satisfied that the proceedings are in accordance with justice. On the facts and in the circumstances of this case, particularly considering the value of the stock stolen and the fact that the accused pleaded guilty to the charge, I do not think the learned Magistrate did not exercise his discretion judicially when he imposed a sentence of six months' imprisonment.

[5] In the result, the conviction and sentence are confirmed.

PARKER, J

I agree.

NDAUENDAPO, J