

**IN THE HIGH COURT OF NAMIBIA**

In the matter between

**THE STATE**

versus

**UATMBUIJE MUHARUKUA**

**[HIGH COURT REVIEW CASE NO.: 55/07]**

**CORAM: MAINGA, J *et* PARKER, J**

Delivered on: 2007 July 11

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**REVIEW JUDGMENT:**

**PARKER, J:**

[1] The 1<sup>st</sup> and 2<sup>nd</sup> accused were charged before the Magistrate's Court, Opuwo, of theft which takes into account the Stock Theft Act, 1990 (Act 12 of 1990). Both accused persons pleaded not guilty. After the learned magistrate had heard evidence, he acquitted the 2<sup>nd</sup> accused and convicted the 1<sup>st</sup> accused as charged.

[2] The learned magistrate committed the 1<sup>st</sup> accused for sentence by the Regional Court, Oshakati, in terms of s. 116 (1) of the Criminal Procedure Act, 1977 (Act 51 of 1977) (CPA). The learned regional magistrate was of the opinion that the proceedings in the Opuwo Magistrate's Court were not in accordance with justice and therefore declined

to sentence the accused person and lay the record of the proceedings before this Court<sup>5</sup> in terms of s. 116 (3) for review of the proceedings.

[3] From the record, I find that the conviction of the accused was based primarily on the hearsay evidence of Constable Utenga, one of the State witnesses to the effect that when he returned to the Police station “they told me that the person (i.e. the 1<sup>st</sup> accused) is saying that he stole the cattle. That’s the end.” None of the “they” who were apparently Police officers was called to tell the court what the 1<sup>st</sup> accused had told them and to allow such testimony to be tested by cross-examination, particularly when the accused denied he made any such statement admitting that he stole the four heads of cattle.

[4] Thus, from the record I am not satisfied that the Prosecution proved the guilt of the accused beyond reasonable doubt.

[5] In the result, the conviction of the accused is set aside. If the accused is in detention he must be released immediately.

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Parker, J

I agree.

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Mainga, J