

**IN THE HIGH COURT OF NAMIBIA**

**THE STATE**

and

**REINHOLDT GUIM**

and

**ELIFAS HANEB**

**HIGH COURT REF NO. 1703/07**

**CORAM:** MANYARARA, AJ *et* HINRICHSEN A.J.

Delivered on: 21 December 2007

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**REVIEW JUDGMENT**

**HINRICHSEN A.J.**

[1] In this matter the two accused were charged with the offence of stock theft in terms of the Stock Theft Act No. 12 of 1990 as amended (the Act). They were charged with stealing one sheep to the value of N\$520,00. They both pleaded guilty and were duly convicted on their plea. They were sentenced each to two years imprisonment. The penalty clause, Section 14 of the Act reads as follows:-

14. (1) any person who is convicted of an offence referred to in section 11(1) (a),(b),(c) or (d) that relates to stock other than poultry-

- (a) of which the value -
- (i) is less than N\$500,00, shall be liable in the case of a first conviction, to imprisonment for a period not less than two years without the option of a fine;
  - (ii) is N\$500,00 or more, shall be liable in the case of a first conviction, to imprisonment for a period not less than twenty years without the option of a fine.

[2] It is immediately evident that as far as sentencing under the Act is concerned the value of the stock in question is of cardinal importance. It was dealt with by the Magistrate in terms of the Record as follows:-

Accused No. 1

"CRT: It is said that the value of the sheep is valued at N\$ 520-00, Do you admit or Dispute?

Acc. (1):I dispute.

CRT: If you dispute that, what do you think is the value?

Acc. (1):N\$ 350-00."

Accused No. 2

"CRT: Mr PP the Accused disputes the value of the sheep, do you accept the value that he suggests or not?

PP: No dispute.

CRT: It is alleged that the value of the sheep is N\$ 520-00, do you admit or dispute that?

Acc. (2) I dispute, I think it is about N\$ 300-00.

CRT: The accused disputes the value of the sheep, what is your position?

PP: I don't dispute it."

[3] There is nothing on the Record to indicate that the importance and the impact of the penalty clause was brought to the attention of the two accused. It seems as though by sheer chance they were saved from being convicted on the basis of the value of the sheep being N\$520,00. Luckily they disputed this value, they did not admit it and their counter valuation of N\$350,00 and N\$300,00 respectively were accepted by the Prosecutor and as far as sentencing was concerned also by the Court.

[4] It cannot be stressed enough that it is the Court's duty to highlight the issue of the value of the stock and to instruct the accused accordingly. It is more over the duty of the prosecution to lead proper evidence of the stock

value and to afford the accused the opportunity to consider this issue properly.

This is crucial.

[5] But the complainant in this case did not give value evidence relating to the sheep. The value evidence tendered by the State is hearsay. The sum total of that evidence is:-

"it is alleged that the value of the sheep is N\$520,00....."

[6] It is inadmissible evidence. The accused cannot plead to inadmissible evidence. The accused can therefore not be sentenced. The accused can thus also not be convicted since they cannot be sentenced.

[7] The sentencing proceedings in this case have therefore been inadequately conducted.

[8] Accordingly the sentence and conviction imposed by the Magistrate of Outjo are set aside.

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**HINRICHSEN A.J.**

**I agree**

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**MANYARARA, AJ**