CASE NO.: CA 103/2010

IN THE HIGH COURT OF NAMIBIA:
NORTHERN LOCAL DIVISION
HELD AT OSHAKATI

In the matter between:

MBINGE TJIPETA **APPELLANT**

and

THE STATE **RESPONDENT**

CORAM: LIEBENBERG, J *et* TOMMASI, J.

Heard on: 30 March 2012
Delivered on: 02 April 2012

APPEAL JUDGMENT

LIEBENBERG, J.: [1] Appellant was unrepresented when arraigned in the Regional Court sitting at Opuwo on a charge of stock theft, read with the

provisions of the Stock Theft Act[1] ('the Act') involving thirty-five head of cattle valued at N$105 000. Despite having pleaded not guilty to the charge he was convicted and sentenced to twenty years' imprisonment. He now appeals against both his conviction and sentence.

[2] The appellant is now represented by Mr *Aingura*, appearing *amicus curiae,* and we are indebted to him for the assistance provided to the Court. Mr *Lisulo* represents the respondent.

[3] On the 31st of March 2008 the appellant was convicted and sentenced, but only filed his notice of appeal and "condonation letter" on the 29th of January 2009, which is clearly out of time. Subsequently the appellant on the 19th of March 2012, with the assistance of counsel filed and amended notice of appeal, 'substituting' the notice initially filed by the appellant in person. The grounds raised in the initial notice are thus abandoned and deserves no further attention. Condonation is sought for the late noting of the appeal and appellant on oath explains the delay saying that due to the notice of appeal not conforming to the Rules of Court[2], an amendment was necessitated.

[4] In order to be able to amend a notice of appeal, there must at least be valid grounds in the notice itself, because a notice of appeal in which no grounds are set out on which the appeal is based, is not a valid notice and is

[1] Act No 12 of 1990 (as amended)
[2] Rule 67 of the Magistrates' Court Rules

as such void. Regarding the amendment of notices of appeal this Court in *Andreas Mumangeni*[3] had the following to say:

> "[10] It has been said that a notice in which no grounds were mentioned *"was not a valid notice of appeal, and as such it was no notice of appeal at all"* (*Hashe v Minister of Justice and Another* 1957 (1) SA 670 (C)) and a nullity (*S v Maliwa*) (supra)[4]. Also that once the notice was found to be a nullity, it remains a nullity and cannot be revived by condonation of the non-compliance with the rules or by amendment of the defective notice (S v *Molebatsi v Federated Timbers (Pty) Ltd* 1996 (3) SA 92 (B) at 94-95D and 96F).
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> [11] There can be no doubt that whereas appellant has not stated *any* ground of appeal in his notice, that the notice was not a valid notice of appeal and therefore was a nullity. From the authority cited above it is furthermore clear that an invalid notice cannot be revived by condonation or by amendment, for reason that there is no foundation on which appellant's case is built. In order to 'amend' something, there at least has to be 'something', which in this instance, there is certainly not. What the appellant should have done once he decided to withdraw his appeal against conviction, was to withdraw the entire appeal and file a fresh notice of appeal under Rule 67 together with an application for condonation for the late filing thereof."

[5] From the five grounds enumerated in the appellant's notice of appeal I am satisfied that four of these clearly do not satisfy the requirements of Rule 67 and must be struck. The second ground raised reads: *"The learn*

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[3] Unreported Case No CA 42/2009 delivered on 25.06.2010

[4] *S v Maliwa and Others 1986 (3) SA 721 (W) at 727*

magistrate fail/erred to take my plea into account adequately that the complainer has given me the mention stolen cattles." (*sic*) When considering whether or not this ground satisfies the rules, the Court bears in mind that the appellant is a lay person and would therefore not be able to draw his notice by using legal terminology. It is however clear that what the appellant means is that the trial court failed to give due consideration to his defence, namely, that the cattle in question were given to him and that he had not stolen same. Judging from the magistrate's statement it is clear that the magistrate interpreted the ground of appeal in the same manner and responded thereto accordingly. In view thereof, I am satisfied that there is one valid ground of appeal on which the notice could be amended; hence, the amendment is proper and the grounds raised ought to be heard.

[6] The following grounds appear from the amended notice of appeal:

Ad Conviction:-

- The magistrate erred and/or misdirected himself by adopting the wrong approach in analysing the evidence by rejecting the appellant's evidence on the basis that the complainant was a reliable and credible witness (grounds one and two taken as one as it amounts to the same thing);
- The magistrate erred by convicting the appellant of theft of 35 head of cattle valued at N$102 000.00

Ad Sentence:-

- In sentencing the magistrate did not exercise his discretion judicially, alternatively failed to exercise such discretion properly by sentencing the appellant to twenty years' imprisonment;
- The magistrate erred in finding that there were no substantial and compelling circumstances present.

[7] Turning to the application for condonation, respondent contends that appellant's explanation on oath for the delay in the circumstances is reasonable; however, that condonation will only be granted if there are reasonable prospects of success on appeal. We are in agreement and the appeal was accordingly heard on the merits.

[8] After pleading not guilty the appellant disclosed his defence by explaining that he received from the complainant first one (1) head of cattle, then another twenty-five (25) and again seven (7); which are the same cattle he stood charged with. He further said that he only thereafter realised that the first one, the seven and another three (3) head of cattle out of twenty-five, did not belong to the complainant. Accordingly, he was surprised to have been reported by the complainant for having stolen the cattle.

[9] The State led the evidence of the complainant only; the evidence not being complicated and amounts to the following: The complainant, being 67 years of age, testified that prior to the 27th of April 2006 he owned forty-eight (48) head of cattle of which first twenty-eight (28) and thereafter a further

seven (7) went missing from his kraal at the cattle post during the night. He started searching for his missing cattle and of the forty-eight, he at first only recovered a few. He then reported the matter to the police. Subsequently and acting on information received from members of society, the complainant departed for Orotjitombwa village and came to the homestead of the appellant who was present, together with his parents. Seven of the complainant's cattle were found in the kraal and another one in the field. Complainant testified that the appellant was polite and when asked by him about the cattle, he admitted that he was the one who stole them. Appellant also informed him that the rest of the cattle were at Okambwende (which appellant confirmed in his testimony). Complainant did not accompany the appellant and others who went there to check on the cattle. A further twenty-eight cattle were recovered and the total value of the cattle stolen, according to the complainant, was N$105 000, valued at N$3 000 each. He was able to identify the cattle on his ear/brand mark. Complainant was adamant that he had not known the appellant prior to him meeting the appellant at his place in search of his missing cattle, and denied having given the appellant any of his cattle. Under cross-examination he conceded that one of the cattle did not belong to him, but to a certain lady called Selma, who suggested to the complainant that their cattle (for purposes of the trial) could be put together, totalling the twenty-eight head of cattle found at Okambwende.

[10] Appellant elected to testify in his defence and maintained that he was given thirty-five head of cattle by the complainant. He further added that amongst these cattle given to him, there was the one that belonged to Selma

and three more which belonged to other people. Also, that the cattle were given to him, being a family member, and that he received the first one already during 2001. As regards the brand marks, appellant said that those on the cattle in question differed from what the complainant had testified about. Appellant said they only had ear marks; however, he never disputed complainant's evidence in that respect.

[11] The magistrate in his *ex tempore* judgment correctly found that it was not in dispute that it was the complainant's cattle that were found in possession of the appellant *"Except for one head of cattle where the Complainant indicated that this cattle belong to a certain Sam".* (*sic*) The court then said that the issue in dispute was to consider whether or not the complainant had given the thirty-four head of cattle to the appellant. The court found that the complainant was clear in his evidence that the appellant was unknown to him prior to his cattle going missing and that he had not given any cattle to the appellant; hence, it found the complainant's evidence truthful. Further, despite complainant being a single witness, the trial court was satisfied that the State has proved its case beyond reasonable doubt and convicted the appellant of theft of *"35 heads of cattle valued at hundred and two thousand Namibian Dollars (N$102 000.00)".*

[12] The magistrate's reference to thirty-five (35) head of cattle towards the end of the judgment appears to be an unintentional mistake as he earlier in the judgment made it clear that one head of cattle belonged to Sam/Selma and he thereafter referred to the number of cattle in question, being thirty-four

(only). The total value of the cattle referred to in the judgment also relates to thirty-four head of cattle and not thirty-five. Thus, despite reference being made to a number of thirty-five head of cattle in the judgment, I am satisfied that the court's intention was to convict the appellant of theft of only thirty-four head of cattle. This conclusion is fortified by the magistrate's notes[5] which clearly reads *"Guilty of 34 cattle valued at N$102 000".* Consequently, this ground of appeal is unmeritorious.

[13] I now turn to consider the first and only other ground of appeal against conviction, namely, that the trial court adopted the wrong approach in its assessment of the evidence, concluding that the complainant was a reliable and credible witness; whilst at the same time rejecting the appellant's version.

[14] The evaluation of the evidence adduced at the trial as set out in the judgment is most unsatisfactory and falls short of what can be described as a well-reasoned judgment. This Court in *David Shilyapeni Protasius v The State*[6] stated that on appeal, the Court of appeal is not only required to consider the outcome of the proceedings held in the lower court, but also the reasons furnished for the conviction or acquittal (as the case may be) and therefore, such reasons should be properly formulated and dealt with in the trial court's judgment, explaining the credibility findings made by that court. The Court of appeal is then required to decide whether due consideration was given to the evidence and whether the trial court has come to the right conclusion in its assessment of all the evidence; and in order to do that, a

[5] Record p 18
[6] Unreported Case No CA 96/2010 delivered on 04.11.2011 at para[13]

well-reasoned judgment would be most helpful.[7] However, this Court as per Maritz, J (as he then was) in *Paulus Nepembe v The State*[8] at p. 12 said:

> "[No] judgment can ever be 'perfect and all-embracing, and it does not necessarily follow that, because something has not been mentioned, therefore it has not been considered' (see: *S v De Beer,* 1990 NR 379 (HC) at 387I-J, quoting from *S v Pillay*, 1977 (4) SA 531 (A) at 534H-535G and *R v Dhlumayo and Others*, 1948 (2) SA 677 (A) at 706), …"

[15] In the present case the magistrate supplemented his reasons on conviction by adding the following:

> "It is clear from the record as well as the judgment as to how the court came to the conclusion as to the value of the cattle involved. There is therefore nothing more to add."

I am not sure that I fully understand the learned magistrate's statement made in response to the amended grounds of appeal and it seems to me to only refer to para 1.3 relating to the thirty-five head of cattle valued at N$102 000. Unfortunately no additional reasons were furnished pertaining to the alleged misdirection in the evaluation of the evidence and the statement is therefore of little assistance to the Court.

[16] In *Rex v Dhlumayo and Another*[9] at 705-706 Davis, AJA (Greenberg, JA *et* Schreiner, JA concurring) laid down principles which should guide an

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[7] *S v Nkosi,* 1993 (1) SACR 709 (A) at 711e-g
[8] Unreported Case No CA 114/2003 delivered on 20.01.2005

appellate court in an appeal based purely upon fact and for purposes of this appeal, I find the following relevant and applicable:

> "3. The trial Judge has advantages - which the appellate court cannot have - in seeing and hearing the witnesses and in being steeped in the atmosphere of the trial. Not only has he had the opportunity of observing their demeanour, but also their appearance and whole personality. This should never be overlooked.
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> 4. Consequently the appellate court is very reluctant to upset the findings of the trial Judge.
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> 5. The mere fact that the trial Judge has not commented on the demeanour of the witnesses can hardly ever place the appeal court in as good a position as he was.
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> 6. Even in drawing inferences the trial Judge may be in a better position than the appellate court, in that he may be more able to estimate what is probable or improbable in relation to the particular people whom he has observed at the trial.
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> 7. Sometimes, however, the appellate court may be in as good a position as the trial Judge to draw inferences, where they are either drawn from admitted facts or from the facts as found by him.
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> 8. Where there has been no misdirection on fact by the trial Judge, the presumption is that his conclusion is correct; the appellate court will only reverse it where it is convinced that it is wrong.
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> 9. In such a case, if the appellate court is merely left in doubt as to the correctness of the conclusion, then it will uphold it."

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[9] 1948 (2) SA 677 (AD)

[17] It has also been said that Courts of Appeal, when applying these principles (quoted above), must be careful of over-emphasising the advantages which the trial court enjoyed, *"lest the appellant's right of appeal becomes illusionary".*[10] I agree.

[18] I already alluded to the absence of a properly formulated and reasoned judgment in this instance. This notwithstanding, the Court is still required to determine from the evidence presented at the trial whether or not the trial court in its assessment of the evidence committed any misdirection.

[19] The magistrate, and in my view correctly, identified the only issue in dispute, namely, whether the appellant was given the thirty-four cattle found in his possession by the complainant, and whether it was indeed stolen as alleged. The only person who testified for the State was the complainant who vehemently denied having done so. The trial court was alive to the fact that the witness gave single evidence and although this has not specifically been dealt with in the judgment, it follows that the court was aware that it had to approach such evidence with caution. It would appear from the judgment that the court decided the guilt of the appellant by determining whether he and the complainant were related and as such have known to one another. In order to decide this, the court found that the complainant's evidence was "clear" on the following: that he did not know the appellant prior to the incident; that the incident occurred in April 2006; and that no cattle were given to the appellant during 2001.

[10] *Protea Assurance Co. Ltd. v Casey,* 1970 (2) SA 643 (AD) at 648E

[20] I do not consider, for the reasons mentioned *infra,* the trial court to have adopted the correct approach when evaluating the evidence and on which it came to the conclusion that the State proved its case beyond reasonable doubt. In *S v Singh*[11] the Court discussed the approach of a court where there is a conflict of fact and the learned judge says the following at 228F-H:

> "Because this is not the first time that one has been faced on appeal with this kind of situation, it would perhaps be wise to repeat once again how a court ought to approach a criminal case on fact where there is a conflict of fact between the evidence of the State witnesses and that of an accused. It is quite impermissible to approach such a case thus: because the court is satisfied as to the reliability and the credibility of the State witnesses that, therefore, the defence witnesses, including the accused, must be rejected. The proper approach in a case such as this is for the court to apply its mind not only to the merits and the demerits of the State and the defence witnesses but also to the probabilities of the case. It is only after so applying its mind that a court would be justified in reaching a conclusion as to whether the guilt of an accused has been established beyond all reasonable doubt. The best indication that a court has applied its mind in the proper manner in the abovementioned example is to be found in its reasons for judgment including its reasons for the acceptance and the rejection of the respective witnesses." (Emphasis added)

[11] 1975 (1) SA 227 (N)

[21] The *dictum* enunciated in *Singh* has been endorsed in this jurisdiction in other judgments.[12] Also what has been said in *Stellenbosch Farmers' Winery Group Ltd & Another v Martell ET Cie and Others*[13] at 14I-J:

> "The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities."

[22] By saying that the evidence of the complainant was "clear", I presume what is meant is that it was truthful and reliable. However, this in itself would not have justified a conviction *without* also considering the appellant's version and the probabilities that presented itself at the trial. The magistrate gives no reasons whatever for his conclusion (by implication) that the defence witness was an unreliable witness; also, the judgment is silent as to the probabilities.

[23] Even though the trial court, as it would appear from the judgment, misdirected itself in its approach when evaluating the evidence adduced at the trial, it does not, in my view, vitiate the conviction.[14] The court did not misdirect itself on the facts and in such instance the point of departure for the Court is to accept that the conclusion reached on the facts, is correct. A Court

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[12] *S v Engelbrecht*, 2001 NR 224 at 226E-G
[13] 2003 (1) SA 11 (SCA)
[14] *S v Shikunga and Another*, 1997 NR 156 (SC)

of Appeal would be slow to disturb the findings of a trial court based on verbal testimony.[15]

[24] The trial court was satisfied that the complainant's testimony was the truth when he said that he was not related to the appellant. I am unable to fault the court in its finding, despite the appellant's evidence to the contrary. On the appellant's version he was first given one head of cattle by the complainant because of their relationship. However, he did not explain why he had been given another twenty-seven and again eight head of cattle by the complainant. It seems that it is suggested that this was because they were family; something I consider to be highly unlikely – even if it were to be the case – because the complainant only had a total of forty-eight head of cattle at the time. And, if he knew the cattle were with the appellant, why would he not go directly to him instead of reporting his missing cattle to the police? I do not think too much should be made of the discrepancy in the complainant's evidence about him claiming ownership of all thirty-five head of cattle whilst the one belonged to a certain Selma. He explained that it was decided between him and the person that for purposes of the court case, it could be added to the complainant's number of cattle. In the circumstances I find the explanation reasonable and in the light of all the evidence adduced, it would be wrong to conclude that the witness deliberately tried to mislead the court.

[25] Appellant was silent as to why he, on his own version, kept those cattle which he knew did not belong to the complainant but to other people, instead

[15] *Parks v Parks,* 1921 AD 69 at p.77

of returning them to their lawful owners. In any case, those alleged persons were never identified. The complainant's evidence is that the cattle were taken from his kraal at night – something that does not favour the handing over of a large number of cattle to a family member. It is further well known that in order to move cattle from one area to another that it requires authorization from the headman, accompanied by the required documentation. Again, it would have been quite easy for the appellant to produce the necessary documentation to corroborate his version. In view of the cattle having been found in the kraal of the appellant's father, his parents would also have been in a position to confirm the handing over of the cattle to the appellant; or at least, that they are related to the complainant as he alleges. Another aspect of the appellant's version which I find surprising is that, if the cattle in question were given to him and became his property, why did he not brand them since 2001 as he would be required to do, either by custom or the law?

[26] I do not thereby suggest that the appellant bore the onus and is under the duty to prove his innocence, but merely whish to point out that in the absence of such evidence showing otherwise, the appellant's version is highly improbable, even if they were related.

[27] The undisputed evidence is that the appellant, when confronted by the complainant at home and in the presence of his parents, *admitted* having stolen the cattle – the seven cattle in his father's kraal and a further twenty-eight kept at Okambwende. This evidence in itself would have weighed

heavily against the appellant in the trial court's assessment of the facts and, in my view, correctly so, as he was under no influence to admit his guilt and has done so freely. The appellant's subsequent conduct by pointing out the rest of the cattle – which he confirmed during his testimony – is consistent with his admission of guilt.

[28] Unfortunately, from a reading of the record of proceedings, this Court does not have the same benefit the trial court had when observing the witnesses in the witness-box during their testimony, which would have enabled it through their candour and demeanour, to form an impression about the veracity of the witnesses.

[29] In the absence of any serious misdirection committed by the trial court in its evaluation of the evidence, there is no reason for this Court to interfere with the court *a quo's* finding. Having considered the merits and demerits of the State and the defence cases respectively, and regard being had to the probabilities, I am convinced beyond doubt that the appellant was correctly convicted of theft of thirty-four head of cattle. Hence, there are no prospects of success on appeal against conviction.

[30] I now turn to consider the appeal against sentence. It is trite law that the sentence which the trial court imposes on an accused person is in the discretion of such court. Furthermore, this is a judicial discretion which must be exercised in accordance with judicial principles.[16]

[16] *S v Tjiho,* 1991 NR 361 (HC) at 366A-B

[31] Appellant testified in mitigation during which he informed the court that he had a wife and small children; both he and the wife being unemployed; and that he had been doing casual work. He was not asked by the court as to how many children he had and their respective ages; neither what his income per month was. Appellant expressed his concern for his family and elderly parents if he were to receive a custodial sentence. The record of proceedings reflects that the State did not prove previous convictions against the appellant.

[32] In his brief reasons on sentence the magistrate stated that the appellant was convicted of a serious offence which was committed out of greed, and continued by reminding the appellant that the court could deviate from the (then) prescribed minimum sentence if there are substantial and compelling circumstances present, and further said: *"You had the opportunity to address Court taking this (sic) circumstances into consideration but you failed to do so. The Court <u>therefore</u> could not find any such circumstances in order to deviate from the prescribed minimum sentence".* (emphasis added) He was then sentenced to twenty years' imprisonment.

[33] It appears from the judgment that, *because* the appellant was unable to put forward substantial and compelling circumstances, therefore, the court was obliged to impose the mandatory sentence of not less than twenty years' imprisonment. Bearing in mind that the appellant was unrepresented and an unsophisticated and illiterate person, there can be no doubt that he would not have understood the meaning or the import of the words 'substantial and

compelling' when it was explained to him by the court. In any event, it would be wrong of a court to expect from an accused to place before the court 'substantial and compelling circumstances', for these are no special circumstances. The presiding officer must invite and encourage the unrepresented accused to put before the court as much as possible information and facts relevant to sentence *in order for the court to decide whether these (mitigating and aggravating factors) are substantial, and whether it compels the court to impose a lesser sentence.* The court *a quo's* failure to assist the unrepresented appellant in any manner and without posing a single question in an attempt to elicit any further information from the appellant, is a serious misdirection and one is therefore not at all surprised to see that the trial court was unable to find any substantial and compelling circumstances in this case. There is nothing on record showing that the court had regard to the personal circumstances of the appellant; that he was a first offender who was trying to support his dependants by doing casual work; and, that all the stolen cattle were recovered. Each of these factors ought to have carried *some* weight and when put together, in my view, would have constituted compelling circumstances justifying a lesser sentence than the mandatory sentence ultimately imposed by the trial court.

[34] In the light of the striking down of s 14 (1)(a)(ii) and (b) of the Stock Theft Act, 1990[17] ('the Act') by the Full Bench of this Court in *Protasius Daniel and Another v The Attorney-General and Two Others*[18], setting aside the mandatory sentences prescribed by the Act, there is no further need to

[17] Act No 12 of 1990
[18] Unreported Case No's A 238/2009 and A 430/2009 delivered on 10.03.2011

determine whether substantial and compelling circumstances exist[19], justifying a lesser sentence. See: *Petrus Lwishi v The State* at p.5 para [11] – [13].[20]

[35] Despite the scanty information the trial court had before it when sentencing, I do not consider it to be in the interest of justice to remit the matter to the trial court for sentence, and will proceed with sentencing afresh.

[36] Appellant is a first offender at the age of twenty-six and the sole provider for his wife and children. This he is able to do by doing casual work. He also assists his elderly parents and has expressed his concern for their well-being should he be given a custodial sentence. Appellant was in custody pending trial for an insignificant period and I do not consider it a mitigating factor or sufficient reason to reduce his sentence accordingly. He has neither expressed any remorse for his wrongdoing.

[37] The crime committed is undoubtedly serious and involves theft of thirty-four head of cattle value at N$102 000. Fortunately the complainant has suffered no monetary loss as all the cattle were recovered. In the *Lwishi* case (*supra*) I had the occasion to say the following at para [15] and which seems apposite to repeat.

> "There is nothing in the *Daniel*-case from which it can be inferred that the Court did not consider stock theft to be a serious offence; neither does the striking down imply that."

[19] Only in respect of cases dealt with under s 14 (1)(a)(ii) and would still apply to sentencing under s 14 (1)(a)(i) involving stock valued at under N$500
[20] Unreported Case No CA 92/2009 delivered on 18.11.2011

Further at para [16]

> "Although the courts now have an unfettered discretion when it comes to sentencing in cases where the value of the stock is N$500 and more, the approach of the sentencing court, in my view, should be to consider the usual factors applicable to sentence, whilst mindful of the need to impose deterrent sentences. Where appropriate, lengthy custodial sentences should be imposed to serve as deterrence in a particular case, as well as generally. Ultimately, that would give effect to the Legislature's intention to address the problem of stock theft (which is rampant in this country), by the imposition of deterrent sentences. Hence, deterrence, as an objective of punishment, in cases of this nature, and where appropriate, should be emphasised."

I consider same applicable to the facts *in casu.*

[38] Appellant stole almost seventy-five percent of the complainant's total number of cattle and which clearly was not only an act of greed on his part, but which robbed complainant of his means of life and undoubtedly would have caused severe hardship upon the elderly complainant, had he not succeeded in recovering all his cattle. Society, in particular in a farming community, are forced to rely heavily upon the trust of their fellow human beings and once that trust has been broken, as in this case, then its members are entitled to expect from the courts to impose deterrent sentences; to serve as a warning and deter, not only the appellant but also others, in an attempt to discourage them as far as possible, of repeating this type of offence.

[39] Having weighed up all mitigating and aggravating factors, I have come to the conclusion that the appellant's circumstances do not measure up to the seriousness of the offence and the interests of society; hence, a lengthy custodial sentence seems inevitable. In determining sentence afresh, regard must be had to that period of the sentence already served by the appellant.

[40] In the result, the Court makes the following order:

1. Condonation is granted for the late filing of the Notice of Appeal and Amended Notice of Appeal.
2. The appeal against conviction is dismissed.
3. The appeal against sentence is upheld and the sentence is set aside.
4. Appellant is sentenced to: Fifteen (15) years' imprisonment of which three (3) years' imprisonment is suspended for five (5) years on condition that the accused is not convicted of stock theft, committed during the period of suspension.
5. The sentence is ante-dated to 31.03.2008.

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LIEBENBERG, J

I concur.

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TOMMASI, J

ON BEHALF OF THE APPELLANT	**Mr S Aingura** **LorentzAngula Inc** ***Amicus curiae***
ON BEHALF OF THE RESPONDENT	**Mr D M Lisulo**
Instructed by:	**Office of the Prosecutor-General**