



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
JUDGMENT

Case No: CR 41/2013

In the matter between:

THE STATE

and

1. **IMMANUEL UIRAB**
2. **FRANS GOEIEMAN AND 2 OTHERS**
3. **JACOB BEREND**

Neutral citation: *The State v Uirab and others* (CR 41/2012) [2013] NAHCMD 199 (18 July 2013)

Coram: SHIVUTE, J and UNENGU, AJ

Delivered on: **18 July 2013**

Flynote: Criminal Procedure – Sentence Imposition of – prescribed minimum sentence in terms of Stock Theft Act 12 of 1990 as amended – Sentence inappropriate and irregular - set aside.

Summary: The accused persons in all the three matters were charged with and convicted of the offence of theft read with the provisions of Stock Theft Act 12 of 1990 as amended and sentenced each to a wholly suspended sentence with the exception of accused Jacob Berend. In the case of Jacob Berend, the conviction and sentence is in order and is confirmed. However, the sentence imposed on

Immanuel Uirab and Fritz Goeieman each, are inappropriate and irregular, sentences set aside and the matter remitted back to the magistrate for sentencing the accused persons afresh, taking into account the provisions of section 297(4) of the CPA.

ORDER

- (i) The convictions in the matters of *The State vs Immanuel Uirab* and *The State vs Frans Goeieman and others* are confirmed, but each sentence imposed by the magistrate in abovementioned cases is set aside and both cases remitted to the magistrate to sentence the accused persons afresh taking into account the provisions of Section 297(4) of the CPA, should the magistrate consider suspending part of the sentence to be imposed.
- (ii) The magistrate is directed to ensure that both accused Immanuel Uirab and Fritz Goeieman are summoned by the Clerk of the Court, Gobabis, for sentencing without further delay.
- (iii) The conviction and sentence in the matter of the State vs Jacob Berend are confirmed.

REVIEW JUDGMENT

UNENGU, AJ (SHIVUTE, J concurring):

[1] The three review cases:

- (1) The State vs Immanuel Uirab;

(2) The State vs Frans Goeieman and 2 others; and

(3) The State vs Jacob Berend were submitted before me for automatic review as provided for in terms of the Criminal Procedure Act, (the CPA¹).

[2] After reading the record of proceedings of all the three cases, I directed the following query for the attention of the magistrate who imposed the sentences:

**“REVIEW CASE NO.: GOB-CRM-704/2011
HIGH COURT REF. NO.: 377/2013
MAGISTRATE’S SERIAL NO.: 121/2011**

THE STATE vs IMMANUEL UIRAB

**REVIEW CASE NO.: GOB-CRM-611/2009
HIGH COURT REF. NO.: 367/2013
MAGISTRATE’S SERIAL NO.: 182/2010**

THE STATE vs FRANS GOEIJEMAN AND 2 OTHERS

**REVIEW CASE NO.: GOB-CRM-2566/2010
HIGH COURT REF. NO.: 378/2013
MAGISTRATE’S SERIAL NO.: 166/2011**

THE STATE vs JACOB BEREND

The Honourable Reviewing Judge remarked as follows:

“1. In view of the provisions of section 297(4) of the Criminal Procedure Act, 51 of 1977 can a prescribed minimum sentence, like the one prescribed in section 14(1)(a) and (b) of Stock Theft Act No 12 of 1990 as amended, be wholly suspended?

¹ Section 302 of Act 51 of 1977

2. Kindly give reasons for you suspending the sentences imposed in cases of (i) The State v Immanuel Uirab, Magistrate's serial no. 181/2010, (ii) The State v Frans Goeieman and others, Magistrate's serial no. 182/2010 and 166/2010, The State v Jacob Berend.

3. Your urgent reply is appreciated.”

[3] The magistrate replied the query, but did so only after a period of three months from the date the query was sent to the Magistrate Court wherefrom the review records originated. I spoke to the magistrate why he took so long to reply to the query, he gave an explanation which was accepted as the delay was due to no fault on his part.

[4] As it appears from the query sent to the magistrate, I wanted reasons why he suspended the sentences wholly while the accused persons were convicted of theft read with the provisions of Stock Theft Act², for which a prescribed minimum sentence is prescribed³, in violation of the provisions of Section 297(4) of the CPA.

[5] From the response of the magistrate, I gather that he is confusing the two prescribed minimum sentences in the Act. The mandatory minimum sentence then applicable for first offenders where the value of stock convicted with is N\$500 or more under section 14(1)(a)(ii) of the Act, as amended, is no longer applicable with the striking down thereof by this Court in the matter of *Protasius Daniel and Another v The Attorney-General and others*⁴.

² Act 12 of 1990 as amended

³ Section 14(1)(a) and (b) of Act 12 of 1990 as amended

⁴ Case No A 238/2009 and A 430/2009, unreported, 10 March 2011

[6] However, the position is different with regard the prescribed minimum sentence applicable for first offenders where the value of stock is less than N\$500 under section 14(1)(a)(i) of the Act. That prescribed minimum sentence has not been affected by the decision in the *Protasius Daniel* matter. Therefore, the magistrate cannot suspend the whole imprisonment sentence imposed on the first offender. Only part thereof may be suspended as provided for in terms of section 297(4) of the CPA.

(7) In the matter of the *State v Immanuel Uirab* Review Case No. 121/2011, the accused was convicted of 1 sheep valued at N\$400 and was sentenced to 24 months imprisonment wholly suspended for 5 years on the condition that accused is not convicted of theft of stock (Act 12/1990) committed during the period of suspension.

[8] In the *State vs (1) Frans Goeieman, (2) Andries Ditiheld, (3) Fritz Goeieman*, accused no 3 was convicted of theft of one (1) sheep with a value of N\$450 and sentenced to 24 months imprisonment wholly suspended for a period of 5 years on condition that accused is not convicted of stock theft (Act 12/1990) committed during the period of suspension.

[9] The conviction and sentence in the *State vs Jacob Berend*, Review Case No. 378/2013 are in order and will be confirmed, the same with regard the convictions of the other two matters.

[10] The sentence in both the matters of *The State vs Immanuel Uirab* and the *State vs Frans Goeieman and others* is inappropriate and irregular, therefore cannot be allowed to stand. In the premises, the following order is made:

- (i) The convictions in the matters of *The State vs Immanuel Uirab* and *The State vs Frans Goeieman and others* are confirmed, but each sentence imposed by the magistrate in these matters is set aside and both cases remitted to the magistrate to sentence the accused persons afresh taking into account the provisions of Section 297(4) of the CPA, should the magistrate consider suspending part of the sentence to be imposed.
- (ii) The magistrate is directed to ensure that both accused Immanuel Uirab and Fritz Goeieman are summoned by the Clerk of the Court, Gobabis, for sentencing without further delay.
- (iii) The conviction and sentence in the matter of the State vs Jacob Berend are confirmed.

EP Unengu
Acting Judge

N N Shivute
Judge