

THE STATE
versus
CHARM KUNENE
and
GRETTA NGWENYA
and
SAMUEL MATHE
and
NJABULO KHANYE
and
GIFT PHIRI

IN THE HIGH COURT OF ZIMBABWE
TAKUVA J
BULAWAYO, 5 October 2023

Criminal Review

TAKUVA J: This matter was referred to the Registrar on automatic review.

The (5) accused persons were convicted of two counts of stock theft in contravention of section 114 (2) (a) of the Criminal Law Code and Reform Act. Nothing turns on the conviction which I hereby confirm.

After mitigation the Learned Magistrate sentenced them as follows;

“Count 1. Each accused 12 years imprisonment

Count 2. Each accused 15 years imprisonment.

Of the total 27 years, 9 years imprisonment is suspended for 5 years on condition each accused does not within that period commit an offence of stock theft involving a bovine beast for which upon conviction each shall be sentenced to imprisonment without the option of a fine

A further 5 years imprisonment is wholly suspended on condition each accused restitutes complainant in count 2 Miclous Dube the sum of \$900 USD, value of the beasts not recovered to be paid in Zimbabwean dollars at the prevailing bank rate of payment through the Clerk of Court Esigodini on or before 30/11/22.

Effective 13 years imprisonment.”

On October 2022 I raised a query with the trial court on the competence of imposing an effective sentence of 13 years in light of the fact that the mandatory minimum sentence for two counts is 18 years. The court *a quo* conceded that it probably misread the ratio in *S v Zharata* HH 155-22. The intention of the Legislature is that the minimum penalty for a count of stock theft is 9 years. It can be more but it can never be less. Where a court imposes a globular sentence but decides to suspend a portion the end result shall not be an effective sentence that works out to be less than 9 years per count as this would clearly defeat the intention of the legislature.

In casu, the trial court erred by remaining with 13 years imprisonment for two counts instead of 18 years.

For the above reasons the sentence cannot be allowed to stand as it is incompetent.

In the result, **IT IS ORDERED THAT;**

1. The sentence by the court *a quo* be and is hereby set aside and in its place is substituted the following;


Count 1: Each accused 12 years imprisonment

Count 2: 15 years imprisonment.

Of the total 27 years imprisonment, 5 years imprisonment is suspended for 5 years on condition each accused does not within that period commit an offence of stock theft involving a bovine beast for which upon conviction each shall be sentenced to imprisonment without the option of a fine.

A further 4 years imprisonment wholly suspended on condition each accused restitutes complainant in count 2 Miclous Dube the sum of \$900 USD value of the beasts not recovered to be paid in Zimbabwean dollars at the prevailing bank rate on the date of payment through the Clerk of Court Esigodini on or before 30/11/23.

1. Effective 18 years imprisonment

Takuva J 

Ndlovu J..... I agree

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