

THE STATE

Versus

CHENJERAI SIBANDA

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 9 AUGUST 2012

DIRECTIVES

KAMOCHA J: This matter was forwarded to this court by the provincial magistrate of the Midlands seeking guidance on how to deal with this matter where some parts of the record went missing while the matter was being prepared for review.

The accused appeared before a senior magistrate at Mberengwa facing a charge of stock theft. It being alleged that on 26 October 2009 he stole four herd of cattle under cover of darkness from the cattle kraal where they had been penned for the night. He tendered a plea of guilty and was accordingly found guilty as pleaded.

He was consequently sentenced to 12 years imprisonment of which 2 years imprisonment was suspended on condition that the accused compensated the complainant via the clerk of court Zvishavane on or before 31 March 2011 in the sum of \$550. Part of the record disappeared before the record could be forwarded for review. However, the indictment, state outline and reasons for sentence are intact.

The back of the indictment shows that the accused pleaded guilty and the court proceeded in terms of section 271 (2)(b) of the Code and was found guilty as charged but what is missing is the following:-

- (a) What accused said in answer to the state outline which was very detailed; whether or not he agreed with the facts *in toto*;
- (b) What the accused had to say when the court was canvassing the essential elements of the crime of stock theft with him;
- (c) What accused had to say about whether or not there were special circumstances in this matter; and
- (d) What he had to say in mitigation of sentence.

On the authority of *S v S* (A juvenile) 1991 (1) ZLR 237 the record should be reconstructed by the clerk of court and thereafter be forwarded to this court for review. The procedure for record reconstruction is laid down in the above case. See also *S v Nortje* 1950 (4) SA 725.

The clerk of court must by affidavit indicate that part of the record was irretrievably lost and should obtain from the trial magistrate an affidavit dealing with issues (a), (b), (c) and (d) above. Affidavits should also be obtained from the public prosecutor who prosecuted and the court interpreter dealing with those issues. Thereafter the accused should be afforded an opportunity to peruse what the above officers have said in order for him to give his version if any, about what took place during the hearing.

Finally the reconstructed record should be forwarded for review in the usual manner.

Kamocha J