

**THE STATE**  
versus  
**MOSES TIZIRAI**

**HIGH COURT OF ZIMBABWE**  
BHUNU J  
HARARE, 25 November 2004

**Criminal Review**

BHUNU J: The accused was convicted on his own his plea of guilty of theft of two bulls. He stole the beasts on the 21<sup>st</sup> September 2004. He was sentenced to 36 months imprisonment of which 12 months imprisonment were suspended on appropriate conditions.

Section 12 of the Stock Theft Amendment Act 6 of 2004 which became law on the 27<sup>th</sup> August 2004 introduced a minimum mandatory sentence of 9 years imprisonment but not exceeding 25 years imprisonment. The section reads:

“12(1) Any person who is convicted of the theft of or attempted theft of any equine or bovine animal or receiving knowing it to have been stolen or inciting or conspiring with any other person to commit any of the foregoing offences shall if there are no special circumstances in the particular case as provided in subsection (2), be liable to imprisonment for a period not less than nine years or more than twenty-five years.

Or to both such fine and such imprisonment.

3. A court sentencing a person under subsection (1) to –
  - (a) the minimum sentence of imprisonment of nine years shall not order that the operation of the whole or any part of the sentence be suspended.
  - (b) Imprisonment in excess of the minimum sentence of imprisonment of nine years, may order that the operation of the whole or any part of the sentence exceeding nine years be suspended.”

It is clear to me that section 12 of the Act requires any court which convicts any person of contravening the section to be sentenced to the prescribed minimum sentence unless the court finds that there are special circumstances in terms of subsection 2. Despite those clear provisions of the law the learned trial magistrate declined to impose the minimum mandatory sentence without making a finding on special circumstances. In declining to impose the minimum mandatory sentence he argued that he lacked the

necessary jurisdiction impose such sentence- Following the landmark decision in the case of the *State vs Tzvitya Gangarahwe* HH-29-05 it is now settled law that Magistrates do not have the necessary jurisdiction to impose the minimum mandatory sentence. It appears the law maker inadvertently omitted to confer Magistrates with the necessary jurisdiction.

The mere fact that the lawmaker omitted to confer Magistrates with the power to impose the minimum mandatory sentence does not however mean that Magistrates retained their ordinary jurisdiction in respect of stock theft cases.

Where the magistrate fails to find special circumstances he is duty bound to refer the matter to the High Court for sentence in terms of section 54 (2) of the Magistrates Court Act [*Chapter 7:10*] as happened in the *Gangarahwe case (supra)*.

As the trial magistrate an incompetent sentence at law it is necessary for this court to intervene on review.

It is accordingly ordered:

1. That the sentence imposed by the trial court be and is hereby quashed and set aside.
2. That the matter be and is hereby remitted to the trial court for remittal to the High Court in terms of section 54(2) of the Magistrates Court Act [*Chapter 7:10*].

BHUNU J: .....

UCHENA J, agrees: .....