

STATE
versus
ITON KACHEPA

IN THE HIGH COURT OF ZIMBABWE
KUDYA J
HARARE 21 June 2006

Criminal review

KUDYA J: On 20 January 2006 the 22 year old accused person stole a brown calf belonging to the complainant at Chegate Farm Nyazura. He slaughtered it and consumed all the meat. It was valued at \$5 million.

He was arraigned before the magistrate's court sitting at Rusape on 23 January 2006 and was duly convicted, on his own plea of guilty. The conviction is in order.

He was sentenced on 23 January 2006 to 36 months imprisonment of which 12 months imprisonment was suspended on condition of good conduct but the suspension was not time framed.

In arriving at this sentence, the trial magistrate did not pay regard to the provisions of section 12 of the Stock Theft Act [*Chapter 9:18*] on the need to ascertain with the accused person whether or not there were any special circumstances peculiar to the case, which he had to record, obviating the imposition of the mandatory minimum sentence of 9 years imprisonment. He therefore misdirected himself. Section 9 of the Stock Theft Act, *supra*, as amended by section 10 of the General Laws Amendment Act No. 6/2005 which came into effect on 3 February 2006, reads as follows:

“9 SPECIAL JURISDICTION OF MAGISTRATES' COURTS”

notwithstanding anything in the Magistrate's Court Act [*Chapter 7:10*]-

- (a) regional magistrates, provincial magistrates and senior magistrates shall have special jurisdiction to impose any penalty prescribed in section eleven and twelve
- (b) magistrates other than magistrates referred to in paragraph (a) shall have special jurisdiction to impose any penalty prescribed in sections four and five.”

It is clear from the above cited provisions of section 9 of the Stock Theft Act, that only senior, provincial and regional magistrates have been granted by the legislature the power to impose the mandatory minimum sentence encapsulated in section 12 of the Stock Theft Act. The lowest rank in the magisterial grade that of magistrates, has not been clothed with this

power. It is therefore desirable that in order to obviate the delays associated with invoking the provisions of s54(2) of the Magistrates Court Act [*Chapter 7:10*] and referral to the High Court for sentence, cases of stock theft be dealt with by senior, provincial and regional magistrates and not by magistrates.

In the instant case, the trial magistrate is of the rank of magistrate. He misdirected himself by failing to canvass the question of special circumstances. The sentence is accordingly set aside and he is directed to recall the accused person so that, that issue is determined.

In the event that he finds special circumstances he is at liberty to impose any sentence within his jurisdiction. If he decides to suspend a portion he is obliged by paragraph (b) of subsection (2) of section 358 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] to suspend it “for a period not exceeding five years on such conditions as the court may specify in the orders.” If however, he finds no special circumstances, he should involve the provisions of section 54(2) of the Magistrates Court Act, *supra*.

BHUNU J, agrees:.....