

THE STATE

Versus

MANDLENKOSI MSIPHA

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 13 FEBRUARY 2003

Review Judgment

CHEDA J: The above record was placed before me for review. The accused was charged with stock theft, in that he stole a calf valued at \$8 000. And \$200 worth of meat was recovered. He pleaded guilty and was sentenced to 4 years imprisonment with labour of which 2 years imprisonment with labour was suspended on the usual conditions. I queried the severity of the sentence with the trial magistrate who responded thus:

“My comments are that – Stock theft is very prevalent and causes alarm and despondence in Fort Rixon and Mbembesi. The court resorted in stiffer penalties in an attempt to save farmers from cattle rustlers.”

In as much as stock theft is prevalent I am failing to see how it can cause alarm and despondence. This type of sentence in view of the value of the beast stolen induces a sense of shock and it can not be allowed to stand. This sentence is out of step with decided cases. In *S v Mpofu & another* HB-30-94 where the accused 25 and 39 years old respectively stole a Friesland cow from a commercial farmer and sold its meat. They were sentenced to 8 months imprisonment with labour of which 4 months was suspended. On review, it was held per CHEDA J (as he then was) that a sentence of at least 1 year would have been appropriate.

In *S v Zvidzai* SC-136-94 a 43 year old communal farmer stole a cow that was awaiting sale, and sold it for \$600. The offence was prevalent in the area and, in the wake of the drought, and in cattle country. It was held that the offence calls for both general as well as personal deterrence. As a farmer, the appellant knew of the need to protect stock. The sentence of 2 years imprisonment with labour of which 1 year was suspended was held to be appropriate.

In these cases, the beasts involved were mature animals obviously of more value than the calf in the present case. While the prevalence of stock theft in Matabeleland provinces is well known, that factor alone should not cloud the trial Court's judgement to an extent of losing mitigatory factors such as the value of the animal involved and all other mitigatory factors which are generally taken into account in favour of the accused person.

The conviction is confirmed but the sentence imposed by the trial magistrate is set aside and substituted by the following:

“12 months imprisonment with labour of which 6 months is suspended for 5 years on condition accused does not during that period commit any offence of which dishonesty is an element for which upon conviction accused is sentenced to imprisonment without the option of a fine. Effective 12 months.”

Ndou J I agree