

THE STATE

versus

LOUIS NDLOVU

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 9 DECEMBER 2004

Criminal Review

NDOU J: The accused was convicted by a Beitbridge magistrate for stock theft. He stole a bull and nothing turns on the conviction. He was arrested whilst trying to sell the bull to staff at Zezani High School. The accused person is extremely fortunate because he was convicted and sentenced on the eve of the coming into operation of the mandatory minimum sentence of nine(9) years for stock theft. The accused person was sentenced to a term of imprisonment of twelve(12) months all of which was suspended on conditions of good behaviour and community service (i.e. half good behaviour and half community service.

The learned scrutinising Regional Magistrate, Gwanda was not satisfied with the propriety of the sentence and referred the matter for review. He holds the view that the sentence imposed is unduly lenient to such an extent that it trivialises the crime of stock theft. I agree with the observation. The approach to theft of bovine, even before the era of the mandatory sentence has always been viewed in a serious light. In this regard I agree with SMITH J in *S v Matinde and Ors* HH-251-92 when he said –

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“In cases of stock theft, where one or two head are involved, I consider that unless there are special mitigating factors, a sentence of not less than three years imprisonment should be imposed with six or more months suspended for good conduct and a further period suspended on condition that the accused paid compensation to the complainant ...” *S v Dube* 2000(1) ZLR 386(H).

This is a serious offence and the mitigating factors are not out of the ordinary.

If the accused, who is convicted of such a serious offence is allowed to benefit from community service, public confidence in the scheme will fall into disrepute – *S v Tigere* HH-225-93; *S v Wilson* HH-125-94; *S v Bondero* HH-170-94; *S v Todzvo* 1997(2) ZLR 162 ad *S v Mugauri* HH-154-99. The recovery of the stolen bull was mere fortuitous. It was not as a result of a change of heart on the part of the accused. Recovery was because the staff at Zezani High School became suspicious and reported to the police. Offences of stock theft are very prevalent in Matebeleland. In this region rearing cattle is a major economic activity. All these factors are common knowledge especially to magistrates stationed in the region.

A sentence in the region suggested by SMITH J, *supra* was called for. This is a case of misplaced sympathy.

Accordingly, I am unable to certify these proceedings as being in accordance with substantial justice. I, therefore, withhold my certificate.