

THE STATE

VERSUS

LOVEMORE NCUBE: CRB: T197/06

IN THE HIGH COURT OF ZIMBABWE

CHEDA J

BULAWAYO 27 OCTOBER 2008 AND 6 NOVEMBER 2008

Review Judgment

CHEDA J: This is a review judgment forwarded to me from the magistrate court as per the usual procedure.

The accused was charged with contravening section 114(1) (2) of the Criminal Law (Codification and Reform Act) (Stock theft). It is alleged that he stole three donkeys valued at \$150 000 -00 and of that value \$100000-00 (old currency) was recovered.

He pleaded guilty to the charge, was convicted and sentenced to 15 years imprisonment.

The conviction is proper, but, what has attracted my attention is the sentence.

The issue of stock theft has been causing some confusion in the magistrates court for a longtime. Magistrates are urged to read judgments of these courts in order for them to be familiar with current legal decisions. These courts have handed down various judgments clearly stating the current legal position being that the definition of "Stock" under the stock theft incorporated in the Criminal law Codification and Reform Act supra does not include a donkey. Therefore, the mandatory sentence of 9 years as a minimum prison term does not apply to the said offence, see *State v Gibson Ndlovu* CRB: K17/05 and *S v John Ndlovu* HH 70/06 where KAMOCHA J clearly laid down the correct legal position.

In light of the above the conviction in this matter is confirmed, but, the sentence is set aside and is substituted by the following:

"4 years imprisonment of which 1 year imprisonment is set aside on condition he

does not within that period commit an offence of which theft is an element for which

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upon conviction accused is sentenced to imprisonment without the option of a fine.

Effective: 3 years imprisonment.

Ndou J.....I agree