

THE STATE
versus
METHUSELI NYONI

HIGH COURT OF ZIMBABWE
TAKUVA J
BULAWAYO 27 AUGUST 2015

Criminal review

TAKUVA J: This matter was placed before me on automatic review in terms of section 57 (1) of the Magistrates Court Act [Chapter 13:11] (The Act).

Briefly, the facts are that the accused stole cattle on three separate occasions belonging to three different complainants. He was charged with three counts of stock theft. He pleaded guilty and was convicted on all three counts as charged. The trial magistrate then took all three counts as one for purposes of sentence and imposed a sentence of 16 years imprisonment.

I then raised the following query with him;

“Having found no special circumstances, the minimum mandatory sentence should have been 9 years per count, yielding a total of 27 years. In view of that, why was accused sentenced to 16 years imprisonment.”

The trial magistrate’s response is this:

“I had thought that since the three counts were similar in nature in that they were all counts of stock theft it could be appropriate to treat them as one for the purpose of sentence.

I regrettably overlooked the fact that offences attracting minimum mandatory sentence can not be treated as one for the purposes of sentence.

I fully acknowledge the enlightening observations of the Hon. Judge and will ensure that such an error does not recur in future.”

The trial magistrate conceded his misdirection. The correct position at law is that where special circumstances are not found, at least the mandatory minimum sentence must be imposed. In *casu*, the minimum sentence is 27 years imprisonment and not 16 years imprisonment that the trial magistrate imposed. For those reasons the conviction is confirmed but the sentence imposed

by the court *a quo* is set aside. The matter is remitted to the trial magistrate who is directed to recall the accused and sentence him afresh as directed.

Takuva J.....

Makonese J agrees