

CRB MS67/03

THE STATE  
versus  
RANGANAYI MAGUNDURU

HIGH COURT OF ZIMBABWE  
MUNGWIRA J  
HARARE, 19 February 2003

### **Criminal Review**

MUNGWIRA J: The record of proceedings has been referred by the trial magistrate who comments as follows:

“I convicted the accused on his own plea of guilty to a single count of stock theft (of bovine). I sentenced him to 4 years imprisonment and in addition brought into effect a 2 year prison term which had been conditionally suspended in 1996.

It was soon after sentencing the accused that I realised that the period of suspension had in fact expired in 2001. However having passed sentence I have become *functus officio* I could not alter it hence I referred this record to you for review and further directions.”

The suspended sentence to which reference has been made was imposed, according to the extract from the Criminal Record Book of the Regional Court Masvingo, on 8 July 1996 and was part of an 8 year sentence. The period of suspension was given as five years.

It is correct that in the normal course the period of suspension begins on the date on which the accused is sentenced. This situation does not however pertain where the accused has served a term of imprisonment. In such a case, the period of suspension only begins to run after the accused has served the sentence of imprisonment imposed on him. *R v John* 1968 (2) RLR 28 (A); 1968 (3) SA 141 (RA).

I would however draw the learned trial magistrate’s attention to the need to take into account when calculating the date on which the period of suspension began that most prisoners earn one-third remission of sentence.

Reid-Rowland in *Criminal Procedure in Zimbabwe* 25-51 admonishes that if necessary, evidence of the date on which the accused was released should be obtained from the prison service.

It would in this case appear, if one takes into account the period to be served that this offence was committed barely two years after the accused's release from custody with the result that the period of suspension has not expired.

The order bringing into effect the suspended sentence can therefore not on that basis be faulted.

Accordingly, the proceedings are certified as being in accordance with real and substantial justice.