

VITALIS TARUVINGA MUNGWINIRI  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
ZHOU J & CHIKOWERO JJ  
HARARE, 9 October 2023

### **Criminal Appeal**

Appellant in person, for the respondent  
*T Kangai*, for the respondent

**ZHOU J:** This is an appeal against sentence imposed following the conviction of the appellant on charges of stock-theft as defined in S 114 of the Criminal Law (Codification moreover, Reform) Act [*Chapter 9:23*]. The appeal pertains to three records which were tried separately. These are CRB GT 96/17, CRB GT 592/1, and CRB GT 604/17. The first two records have already been considered by this court in the exercise of its review powers following the referral of the records in terms of s 57 of the Magistrate Court Act. This Court is not going to interfere with the review decision made earlier on by MAFUSIRE J with the concurrence of MAWADZE J.

The substance of the appellant's case before this court is that the third record, CRB GT 604/17 ought to be considered together with the other two records which were the subjects of the review minute referred to above. His contention is that the overall effective sentence which he will serve if GT 604/17 is not considered together with the other 2 would be excessive.

It would be an irregularity for this court to revisit the review minute by seeking to join the two records with CT 604/17. That request is therefore declined.

The alternative argument made by the appellant is that the overall sentence in CRB CT 604/17 is excessive and ought to be interfered with. We note that in that case the appellant was convicted of three counts. However, the court *a quo* committed an irregularity which the appellant has unduly benefited from in that instead of imposing a minimum of 9 years imprisonment on each count to give a starting minimum of 27 years, the Learned

Magistrate treated all three counts as one for sentence. That approach is contrary to the position articulated in the relevant case authorities. Owing to the irregularity, the court *a quo* imposed a sentence of 18 years imprisonment of which 3 years imprisonment was suspended to leave an effective sentence of 15 years imprisonment. This is the sentence that the appellant urges this court to interfere with. Already the sentence is manifestly lenient apart from the fact that it is afflicted by an irregularity from which the appellant has benefited.

While the option would have been there if the three counts had attracted the minimum of 9 years each for the court to order some or all of the sentences to run concurrently, the circumstances of this case would not justify such an approach. To do so would undermine the administration of justice, in that the appellant who stole a total of ten cattle in three separate counts would be treated the same way as a person who has stolen one beast in only one count if he was to serve only 9 years imprisonment for the 3 counts.

For these reasons this appeal is without merit.

In the result, **IT IS ORDERED THAT:**

1. The appeal be and is dismissed in its entirety.

**CHIKOWERO J** agrees .....

*National Prosecuting Authority*, respondent's legal practitioners