

THE STATE

Versus

SIMBARASHE NCUBE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 23 FEBRUARY 2006

Criminal Review

NDOU J: The accused was arraigned before the Magistrates' Court of Gwanda on two charges of stock theft i.e. equine. He pleaded not guilty but was duly convicted of both charges after evidence was adduced. Nothing turns on the conviction.

My concern arises from the propriety of the sentence imposed upon the accused. The accused was properly advised of the provisions of section 12(1) of the Stock Theft Act [Cap 9:18] as amended by section 4 of Stock Theft Amendment Act [Act 6 of 2004]. The accused failed to advance any special circumstances and as such the minimum mandatory sentence of nine(9) years had to be imposed. The learned trial magistrate treated the two charges as one for the purpose of sentence and imposed a sentence of nine(9) years. Nine(9) years imprisonment is the minimum sentence per charge. By taking the two counts as one the sentence imposed is less than the minimum mandatory sentence. This constituted a mis-direction on the part of the trial court. It goes

against the spirit of section 12 in particular sub-section 2 thereof.

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Accordingly, I confirm the convictions on both charges. I, however, set aside the sentence imposed and refer the matter back to the trial court for the accused to be brought before the trial court and be sentenced afresh.

Bere J I agree