

IN THE HIGH COURT OF SWAZILAND

Review Case No. 3/1997

In the matter between:

Rex

vs

Phillemon Mvobi Ndzinisa

REVIEW JUDGMENT

(16/01/97)

The accused was charged in the Magistrate Court at Lobamba with having stolen 1 black and white she goat valued at E200.00 which was the property of and in lawful possession of Simon Nkwanyane.

Accused pleaded not guilty but was found guilty as charged and sentenced to two years imprisonment.

I have examined the record of the proceedings which are in accordance with real and substantial justice save in one respect. The Magistrate has appended to the record a note that an error has been perpetrated in sentencing the accused.

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The accused person has a previous record of conviction for stock theft and by virtue of Section 18(1) of the Stock Theft Act No. 5 of 1982 as amended by Section 4(1) (b) of Act 11 of 1987 a minimal sentence of 5 years imprisonment should have been imposed. The Magistrate states that had he applied his mind correctly to the provisions of the law he would have passed a sentence of five (5) years imprisonment, there being no extenuating circumstances found in connection with the commission of the offence.

The fact that he was facing a minimum sentence of 5 years imprisonment should have been brought to the attention of the accused. Real and substantive justice requires that the accused be given an opportunity of addressing the Court before the sentence imposed upon him is increased. In the circumstances I set aside the sentence which has been imposed and commit the matter to the Magistrate for hearing and address by the accused and any witnesses who may be called. The Magistrate is then to pass sentence afresh.

Dated at MBABANE this 16th day of January, 1997

S.W. SAPIRE

ACTING CHIEF JUSTICE