



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 236/05

In the matter between:

MULLER, STEPHANUS DANIËL PETRUS

Appellant

and

THE STATE

Respondent

Before: **STREICHER, BRAND & NUGENT JJA**

Heard: **7 MARCH 2006**

Delivered: **29 MARCH 2006**

Summary: Sentence – contravention of s 2 of Stock Theft Act 57 of 1959 – no irregularity or misdirection by sentencing court – sentence of 4 years’ imprisonment half suspended not inappropriate.

Neutral citation: This judgment may be referred to as Muller v The State [2006] SCA 41 (RSA)

STREICHER JA

STREICHER JA:

[1] The appellant was convicted in the Regional Court at Mthibistadt on two counts of the theft of cattle. He was sentenced to four years' imprisonment in respect of the first count and in respect of the second count he was sentenced to two years' imprisonment suspended for a period of three years. On appeal to the Bophuthatswana High Court the convictions were set aside and 'substituted with convictions of possession of suspected stolen property'. The sentence in respect of the conviction on the first count was altered to one of four years' imprisonment of which half was suspended for four years. With the necessary leave the appellant now appeals against this sentence.

[2] It is common cause between the appellant and the respondent that the appellant was convicted of a contravention of s 2 of the Stock Theft Act 57 of 1959 which provides as follows:

'Any person who is found in possession of stock or produce in regard to which there is reasonable suspicion that it has been stolen and is unable to give a satisfactory account of such possession shall be guilty of an offence.'

[3] The appellant was found in possession of eight stolen cattle which he intended to sell at an auction. Inspector Maritz testified that when he confronted the appellant, the appellant produced a document which indicated that the seller of the cattle was one Simon Morake. Asked who Simon Morake was he pointed to Ernest Mongotleng who had accompanied him and who became his co-accused in the Regional Court. Mogotleng's evidence was to the effect that he had not sold the cattle to the appellant. The appellant did not testify at the trial and did not dispute the evidence of either Maritz or Mogotleng.

[4] The appellant submitted that the High Court failed to consider a sentence of correctional supervision or one imposing a fine. He submitted furthermore that the

High Court failed to take into account the fact that the cattle had been found back and that no damage was suffered; that the appellant had been convicted of a less serious offence than theft; that the appellant was, at 42 years of age, a first offender with a wife and children who were dependent on him; and that he was in a position to pay a fine.

[5] The mere fact that the High Court did not specifically mention the matters referred to is an insufficient basis for a finding that it did not consider or take them into account. The appellant was legally represented in the High Court and all these matters would have been drawn to the attention of that court. In the circumstances the fact that they were not specifically mentioned is not a basis for believing that they were not considered or taken into account.

[6] The punishment in respect of the offence committed by the appellant was a matter for the discretion of the High Court and should only be altered on appeal if that discretion had not been judicially and properly exercised. That will be the case if the discretion is vitiated by irregularity or misdirection or if the sentence is disturbingly inappropriate. Having regard to the seriousness of the offence committed by the appellant I am not persuaded that the sentence imposed by the High Court is inappropriate or that the High Court committed a misdirection. The appeal should therefore be dismissed.

[7] There is another matter which should be raised in this appeal. The appellant and his co-accused were convicted in the Regional Court of the same offences and the regional magistrate was of the view that they should receive the same sentences. In the premises the High Court, when it altered the convictions in respect of the appellant, should have considered whether the conviction of the appellant's co-accused was in accordance with justice and should have made use of the review powers conferred on it by s 304(4) of the Criminal Procedure Act 51 of 1977 if it

found that it was not. If the High Court has not done so it should consider doing so now.

[8] The appeal is dismissed.

P E STREICHER
JUDGE OF APPEAL

CONCUR:

BRAND JA)

NUGENT JA)