

IN THE SUPREME COURT OF ZAMBIA

SCZ Appeal No. 13 of 1993.

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

FANWELL SIMUNTANGA

1st Appellant

ANSULO MHEMBA

2nd Appellant

Vs

THE PEOPLE

Respondent

Coram: Sakala, Chaila and Muzyamba, JJ.S.

5th October, 1993.

For the appellants, Mr. S.J. Banda of Lwanga Chambers.

For the State, Mr. L. Muuka, Assistant Senior State Advocate.

J U D G M E N T

Sakala J.S. delivered the judgment of the court.

The appellants were convicted of Stock theft by the Subordinate Court of the First Class, holden at Kabwe Contrary to Section 275 of the Penal Code, Cap 146 of the Laws of Zambia.

The particulars of the offence alleged that, the two appellants, on a date unknown but between 9th April 1992 and 11th April, 1992, at Kabwe, in the Central Province of the Republic of Zambia, jointly and whilst acting together did steal thirty heads of cattle valued at K850,000.00 the property of George Magai. They pleaded guilty to the charge and were sentenced to five years imprisonment with hard labour. They appealed to the High Court. On appeal to the High Court, the learned appellate judge had this to say:-

"Now turning to sentence, I appreciate the trial court

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"Now turning to sentence, I appreciate the trial court reached the maximum of his sentencing powers but I consider the stealing of so many animals to be outrageous and deserves a bit more heavier punishment than the statutory minimum sentence of five years imprisonment with hard labour.

I set that aside and impose nine years imprisonment with hard labour with effect from today plus the days accused were remanded in custody."

On behalf of the appellants, Mr. Banda initially indicated that the appeal was against both conviction and sentence but subsequently withdrew the appeal against conviction and advanced submissions only on the enhancement of sentence by the High Court.

The brief submission was that the sentence of nine years from five years imprisonment with hard labour was too excessive, taking into account that the appellants were first offenders and the animals had been recovered.

We agree with the submissions by the learned defence counsel. It would appear to us that the learned appellate judge only took into account the negative fact against the appellants namely, the number of animals stolen. The positive facts in favour of the appellants were ignored, that they were first offenders, who pleaded guilty and that all the animals were recovered. The sentence of nine years in the circumstances where the appellants were first

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offenders and pleaded guilty comes to us with a sense of shock and wrong in principle. Accordingly, we set aside the sentence of nine years imprisonment with hard labour. In its place we restore the sentence imposed by the learned principal Resident Magistrate namely, five years imprisonment with hard labour with effect from the date of arrest.

To that extent, the appeal succeeds.

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E.L. Sakala,

SUPREME COURT JUDGE.

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M.S. Chaila,

SUPREME COURT JUDGE.

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W.M. Muzyamba,

SUPREME COURT JUDGE.