



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: R193/2019

In the matter between:

THE STATE

and

MOEKETSI PETRUS RALEPANYANE

CORAM: JORDAAN, J *et* OPPERMAN, J

JUDGMENT BY: JORDAAN, J

DELIVERED ON: 28 NOVEMBER 2019

REVIEW JUDGMENT

- [1] This matter was submitted for special review in terms of section 304 of the Criminal Procedure Act 51 of 1977.

- [2] The accused was charged with stock theft in contravention of the Stock Theft Act 57 of 1959, allegedly having stolen 14 sheep. He was legally represented and pleaded guilty of receiving stolen property in contravention of section 37 of the General Law Amendment Act 62 of 1955. The plea was accepted by the prosecution on the basis of the plea explanation that was submitted. However, he admitted to receiving only 11 sheep.
- [3] The presiding magistrate convicted the accused of contravention of section 37(2) of the General Law Amendment Act and sentenced him to 6 years imprisonment, wholly suspended for a period of five years.
- [4] First of all, a conviction of receiving stolen property contravenes section 37(1) and not (2). Secondly, stock or produce as defined in the Stock Theft Act is explicitly excluded from the ambit of section 37. The conviction was therefore irregular as correctly pointed out by the acting regional court magistrate who submitted the matter for special review.
- [5] The learned regional court magistrate suggested that the charge should have been contravention of section 2 of the Stock Theft Act. However, on the basis of the plea explanation the accused knew that the sheep were stolen, which would have justified a conviction in terms of section 11(1)(b) of the Stock Theft Act.
- [6] As aforesaid, the conviction was not competent and must be set aside.
- [7] In the result the following orders are made:
1. The conviction and sentence are set aside.

2. The matter is remitted to the regional court to be dealt with *de novo*.

I concur

AF JORDAAN, J

M OPPERMAN, J