

**IN THE HIGH COURT OF SOUTH AFRICA  
(BOPHUTHATSWANAPROVINCIAL DIVISION)**

**THE STATE**

**VS**

**DORCAS MATSHIDISO SETLHAKO & 2 OTHERS**

**REVIEW:  
LEE UJ:**

1. The accused were convicted of Theft of a total amount of R8073.72. The sentence imposed read as follows:

“ In terms of section 300 of the code, Accused 1 is sentenced to compensate complainant in the amount of R4 000.00, Accused 2 to compensate complainant in the amount of R3 000.00 while Accused 3 to compensate complainant in the amount of R2 000.00. The compensation to be payable before 30<sup>th</sup> November 2001 failing which to undergo a period of 12 months imprisonment each.”

2. All three accused pleaded guilty to the charge and each admitted to have stolen the following amounts:

- (i) Accused No 1 : R3 500.00;
- (ii) Accused No 2 : R2 170.00 and
- (iii) Accused No 3 : R1 329.00

The total amount according to them is R6 999.00 which amounts also appears on the Charge Sheet.

3. When the State led evidence, the complainant alleged that the total amount stolen is R8 073.72. The accused did not challenge the accuracy of the amount stolen during cross-examination and this discrepancy was neither cleared by the Prosecutor nor the Magistrate.

4. The conviction is in order but the sentence imposed is defective in view of the following:

- (i) It is not clear from the record whether the Public Prosecutor, when he brought the application for compensation, was acting on the instructions of the complainant, see S v Bapela 1978 (2) SA 22 (B).
- (ii) The amount of compensation has not been properly or clearly calculated through evidence;
- (iii) A compensatory order in terms of section 300 of the Criminal Procedure Act No 51 of 1977 (The Act) has the effect of a civil judgment. It is therefore improper to have an alternative imprisonment in the event of non-payment of the compensation. S v Luthuli 1972 (4) SA 463 (W).
- (iv) The accused were not given an opportunity to address the court on the amount of compensation that each one had to pay.

I thus make the following order:

- (i) The conviction is confirmed and the sentence is set aside;
- (ii) The matter is remitted to the Magistrate to fully enquire into and establish, the exact

amount of damages suffered by the complainant for the purpose of compensation;

(iii) The sentence is to be considered afresh.

**M M LEEUW**  
**JUDGE OF THE HIGH COURT**

I agree.

**B E NKABINDE**  
**JUDGE OF THE HIGH COURT**  
**25 OCTOBER 2001**