

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI**

REVIEW JUDGMENT

Case No: CR 17/2024

In the matter between:

THE STATE

and

1. SACKARIA NESTOR

(HIGH COURT REVIEW CASE NO: 555/2023)

2. HANS NAMUHUYA

(HIGH COURT REVIEW CASE NO: 557/2023)

3. DAVID NANGOLO

(HIGH COURT REVIEW CASE NO: 556/2023)

Neutral citation: *S v Nestor and Others* (CR 17/2024) [2024] NAHCNLD 43 (15 April 2024)

Coram: MUNSU J *et* KESSLAU J

Delivered: 15 APRIL 2024

ORDER

1. The conviction in respect of each case is confirmed.
2. The sentence in each case is set aside and substituted with the following sentence: Accused to pay a fine of N\$ 2 000 or 3 months imprisonment.
3. In respect of the first two matters (*S v Sakaria Nestor* and *S v Hans Namuhuya*), the sentence is antedated to 01 November 2023. As for the last matter (*S v David Nangolo*), the sentence is antedated to 02 November 2023.

REVIEW JUDGMENT

MUNSU, J (KESSLAU, J concurring):

[1] The above-captured cases came on automatic review in terms of s 302 of the Criminal Procedure Act 51 of 1977 as amended (the CPA). The aforesaid cases emanate from the same court, and were all finalised by the same presiding officer in terms of s 112 (1)(a) of the CPA following the accused's plea of guilty.

[2] In respect of the first case of *S v Sakaria Nestor*, the accused was charged with the crime of theft of 1 Pallet valued at N\$ 500, while in the case of *S v Hans Namuhuya*, the accused was similarly charged with the crime of theft, albeit of 2 x Mitchum to the value of N\$ 217.98. As for the last-mentioned case of *S v David Nangolo*, the accused was charged with the crime of crimen injuria for using obscene language towards a police officer.

[3] In each of the first two cases of theft, the accused were sentenced to a fine of N\$ 2 000 or 6 months imprisonment, while in the last-mentioned case, the accused was sentenced to a fine of N\$ 2 000 or 12 months imprisonment.

[4] A similar query was directed to the magistrate in respect of all the cases, as follows:

'In light of the fact that s 112(1)(a) of the CPA is intended for minor offences, was the learned magistrate not supposed to apply s 112(1)(b)'?

[5] In response, the magistrate referred to relevant case law, including *S v Zauisomwe*¹ wherein the court restated the basic principle regarding s 112(1)(a), being that it contemplates convictions in respect of minor offences, and that the increase of the monetary limit from a fine of not more than N\$ 300.00 to a fine not exceeding N\$ 6 000.00 did not alter the basic principle behind the said provision. The court cautioned that, while there is a range of options within the sentencing margins of s 112 (1) (a) of the CPA, care must be taken that the sentence imposed is commensurate with a minor offence. The court stated that:

'Therefore a lengthy imprisonment term, even as an alternative to a fine, is irreconcilable with the character of the provision.'

[6] The court went on to refer to *S v Aniseb*² wherein the court had the following to say:

'The policy behind section 112(1)(a) is clear. The legislature has provided machinery for the swift and expeditious disposal of minor criminal cases where the accused pleads guilty. The trial court is not obliged to satisfy itself that an offense was actually committed by the accused but accepts his plea at face value. The accused thus loses the protection afforded by the procedure envisaged in section 112(1)(b), but he is not exposed to any really serious form of punishment...'

[7] In the *Zauisomwe* matter (supra), the accused had pleaded guilty on a traffic matter in terms of s 112(1)(a) and was sentenced to a fine of N\$ 3 000 or 12 months

¹ *S v Zauisomwe* (CR 10/2020) [2020] NAHCMD 44 (11 February 2020).

² *S v Aniseb* 1991 NR 203 (HC).

imprisonment. On review, the sentence was set aside and substituted with a fine of N\$ 3 000 or 3 months imprisonment.

[8] In this instance, the learned magistrate is of the opinion that the fines imposed in each of the cases are appropriate considering the prevalence of the crime of theft in the district. She also justifies the fine imposed in respect of *crimen injuria* and emphasises the necessity for police officers to be accorded the respect they deserve. The magistrate however, concedes that the alternative terms of imprisonment imposed are excessive as they contradict the objective of s 112(1)(a). She suggests that the sentence be amended to read a fine of N\$ 2 000 or 3 months imprisonment. The concession is rightly made.

[9] Accordingly, it is ordered as follows:

1. The conviction in respect of each case is confirmed.
2. The sentence in each case is set aside and substituted with the following sentence: Accused to pay a fine of N\$ 2 000 or 3 months imprisonment.
3. In respect of the first two matters (*S v Sakaria Nestor* and *S v Hans Namuhuya*), the sentence is antedated to 01 November 2023. As for the last matter (*S v David Nangolo*), the sentence is antedated to 02 November 2023.

DC MUNSU
JUDGE

I agree

EE KESSLAU
JUDGE