



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 25/2013

In the matter between:

THE STATE

APPLICANT

and

MAZIYEZI TETUKA SOLOMON

RESPONDENT

(HIGH COURT REVIEW CASE NO.: 429/2013)

Neutral citation: *State v Solomon* (CR 25/2013) [2013] NAHCMD 94 (9 April 2013)

Coram: PARKER AJ *et* UNENGU AJ

Delivered: 9 April 2013

Flynote: Criminal procedure – Sentence – Formulation of sentence not only unclear but also bad in law – Court setting aside the sentence and replacing it with another sentence.

Summary: Criminal procedure – Sentence – Formulation of sentence not only unclear but also bad in law – Trial court suspending part of the period of imprisonment for two years 'on condition that the accused is not convicted during period of suspension' and the other part also for two years 'on condition accused completes 400 hrs of community service ...' – Court set aside the sentence and put another sentence in its place.

ORDER

Six months' imprisonment; wholly suspended for four years on condition that –

- (a) the accused performs 400 hours of community service at Ngonga Primary School under the supervision of Mrs E N Peleko. The community service starts on 28 January 2013 and it is performed every day (except a public holiday) from 08h00 to 13h00; and
- (b) the accused is not convicted of the offence of theft, committed during the period of suspension.

JUDGMENT

PARKER AJ (UNENGU AJ concurring):

[1] The accused (accused 1) and three co-accused were charged with theft at the District Magistrates' Court, Katima Mulilo. At the commencement of proceedings the charge was withdrawn against the second, third and fourth accused persons. Accused 1 pleaded guilty and after being questioned in terms of s 112(1)(b) of the Criminal Procedure Act 51 of 1977 he was convicted and sentenced.

[2] I am satisfied that the conviction and sentence are in accordance with justice. However, the formulation of the sentence is not only unclear but it is also bad in law. The formulation of a sentence must be clear for all to see so that its terms can be carried out without any difficulty.

[3] In the result, the conviction is confirmed but the sentence is set aside and the following is put in its place:

Six months' imprisonment; wholly suspended for four years on condition that –

- (a) the accused performs 400 hours of community service at Ngonga Primary School under the supervision of Mrs E N Peleko. The community service starts on 28 January 2013 and it is performed every day (except a public holiday) from 08h00 to 13h00; and
- (b) the accused is not convicted of theft, committed during the period of suspension.

C Parker
Acting Judge

E P Unengu
Acting Judge