

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no.: CR 51 /2017

**THE STATE**

And

**EMILY NAWASES**

**(HIGH COURT MAIN DIVISION REVIEW REF NO. 1531/2016)**

**Neutral citation:** *S v Nawases* (CR 51/2017) [2017] NAHCMD 222 (11 August 2017)

**Coram:** SHIVUTE J and SIBOLEKA J

**Delivered:** 11 August 2017

---

## ORDER

---

(a) The conviction in the first count is confirmed. However the sentence is altered to read: 'N\$5000 fine or 18 months' imprisonment suspended in *to to* for 5 years on condition that the accused is not convicted of dealing in dependence producing substance committed during the period of suspension.' The sentence is back dated to 1 September 2016.

(b) The conviction and sentence on the second count are set aside.

---

## REVIEW JUDGMENT

---

SHIVUTE J, (SIBOLEKA J CONCURRING)

[1] The accused was charged with one count of dealing in dependence producing substance contravening s 2 (b) of Act 41 of 1971 and one count of possession of dependence producing substance of the same Act following a plea of guilty on both counts.

[2] On both offences the accused was convicted of dealing in dependence producing substance and possession of dependence producing substance which relate to the same six ballies of cannabis, time and place.

The accused was sentenced as follows:

1<sup>st</sup> Count: N\$5000 fine in default of payment 18 months' imprisonment wholly suspended for a period of 5 years on condition that the accused does not commit the offence of dealing in dependence producing substance committed during the period of suspension.

2<sup>nd</sup> Count: N\$1000 fine in default of payment 6 months' imprisonment which is wholly suspended for a period of 3 years on condition that the accused does not commit the offence of possession of dependence producing substance committed during the period of suspension.

[3] I queried the magistrate whether the six ballies mentioned in the first count were also the six ballies mentioned in the second count: whether the condition of sentence imposed is not too vague and what the learned magistrate had in mind when she said on condition the accused does not commit the offence.

[4] First of all the learned magistrate apologised for not responding on time because she was on sick leave.

[5] The learned magistrate further explained that the six ballies which the accused was convicted of dealing in dependence producing substance were the same six ballies he was convicted of possession of dependence substance.

[4] The learned magistrate further explained that the six ballies which the accused was convicted of dealing in dependence producing substance were the same six ballies he was convicted of possession of dependence producing substance.

[7] In respect of sentence she said the sentence should read as follows:

1<sup>st</sup> Count: N\$5000 fine or in default of payment 18 months' imprisonment which is wholly suspended for a period of 5 years on condition that the accused is not convicted of dealing in dependence producing substance committed during the period of suspension. She also replaced the condition of suspension on the second does not commit with is not convicted.

[8] By convicting the accused in respect of both counts relating to the same six ballies committed at the same place and time amounts to duplication of convictions. The accused committed two acts of which each standing alone would be criminal but did so with a single intent. The accused possessed the six ballies of cannabis with a view to sell them as she explained when she was questioned in respect of the first count. Both acts are necessary to carry out that intent therefore, she ought only to be

convicted of one count as the two acts constitute one criminal transaction. I am satisfied that the accused admitted all the elements of the first count and she was rightly convicted.

[9] With regard to the second count, the conviction is impermissible and it cannot be allowed to stand. This goes to the sentence as well.

[10] Coming to the sentence imposed in respect of count 1, it is too vague in the sense that the magistrate put a condition that the accused does not commit the offence. A mere alleged committal of an offence should not be made a condition of suspension of sentence. The sentence as well as the condition should be clear so that the accused can be clear of what is expected of him. The sentence imposed by the magistrate cannot be allowed in the form it is, there is a need for it to be altered.

[11] In the result the following order is made:

(a) The conviction in the first count is confirmed. However the sentence is altered to read: 'N\$5000 fine or 18 months' imprisonment suspended *in toto* for 5 years on condition that the accused is not convicted of dealing in possession of dependence producing substance committed during the period of suspension.' The sentence is back dated to 1 September 2016.

(b) The conviction and sentence on the second count are set aside.

-----  
NN SHIVUTE  
Judge

-----  
A SIBOLEKA  
Judge