**‘ANNEXURE 11’**

**IN THE HIGH COURT OF NAMIBIA**

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| **Case Title:***The State v Tobias Mwahindange and Another* | **Case No:**CR 59/2020 |
| **Heard before:**Honourable Ms Justice UsikuHonourable Ms Justice Claasen | **Division of Court:**Prison Division |
| **Neutral citation:** *S v Mwahindange* (CR 59/2020) [2020] NAHCMD 361 (17 August 2020) | **Delivered on:**17 August 2020 |
| HIGH COURT MAIN DIVISION REVIEW REF NO. 1056/2020) |
| **Neutral citation:** *S v Mwahindange* (CR 59/2020) [2020] NAHCMD 361 (17 August 2020) |
| **The order:**The conviction is confirmed. The sentenced is substituted with the following sentence:Accused is fined N$2000.00 (two) thousand Namibian Dollars or 12 (twelve) months imprisonment, wholly suspended for a period of 5 years on condition that accused should not be convicted of possession of housebreaking implements in contravention of s 9 of Proclamation 27 of 1920 committed during the period of suspension. |
| **Reasons for order:** |
|  USIKU J (concurring Claasen J)1. After this matter was submitted before me on review, I found the proceedings not to be in accordance with justice and directed the following query to the learned magistrate:

‘Can a sentence be suspended for an unspecified period of time? Is the sentence a competent one?’1. The learned magistrate responded to the query as follows:

 ‘1. I acknowledge that a typing error occurred on the review sheet and on the charge sheet. I apologise and it shall not happen again.’ He also proposed that the conviction be confirmed and the sentence be corrected.  1. Indeed, the concessions made by the learned magistrate are correct.
2. Section 297 (1)(b) of the Criminal Procedure Act 51 of 1977 provides;

 Where a Court convicts a person of any offence, other than an offence in respect of which any law prescribes a minimum punishment, the Court may in its discretion; (b) pass sentence but order the operation of the whole or any part thereof to be suspended for a period not exceeding five years on condition referred to in paragraph (a)(i) which the Court may specify in the order.1. Consequently, the conviction is confirmed. The sentenced is substituted with the following sentence:

Accused is fined N$2000.00 (two) thousand Namibian Dollars or 12 (twelve) months imprisonment, wholly suspended for a period of 5 years on condition that accused should not be convicted of possession of housebreaking implements in contravention of s 9 of Proclamation 27 of 1920 committed during the period of suspension. |
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| **D N USIKU****JUDGE** | **C M CLAASEN****JUDGE** |