

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION WINDHOEK

REVIEW JUDGMENT

<b>Case Title:</b> The State v Sydney Gauaseb	<b>Case No:</b> CR 77/2023
<b>High Court MD Review No:</b> 191/2023	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Hon Judge Shivute et Hon Judge Claasen	<b>Delivered on:</b> 18 July 2023
<b>Neutral citation:</b> <i>S v Gauaseb</i> (CR 77/2023) [2023] NAHCMD 409 (18 July 2023)	
<b>The order</b> <ol style="list-style-type: none"><li>1. The convictions are confirmed.</li><li>2. The sentence is set aside and it is substituted with the following sentence: The counts are taken together for sentencing and the accused is sentenced to pay a fine of N\$2000 or six months' imprisonment fully suspended for one year on the conditions that:<ol style="list-style-type: none"><li>a) the accused is not convicted of assault with the intent to do grievous bodily harm committed during the period of suspension;</li></ol></li></ol>	

b) the accused completes 400 hours of community service at the Otavi Magistrates' Court under the supervision of Mr Sebulon Homseb between the hours of 08h00 until 13h00 during weekdays, which service is to commence on 30 January 2023.

**Reasons for order:**

CLAASEN J (concurring SHIVUTE J)

[1] The case appeared before me on automatic review. The accused, who was not legally represented was convicted of one count of assault with the intent to do grievous bodily harm and one count of assault by threat. The counts were taken together for sentencing and he was given a fully suspended sentence on certain conditions.

[2] The reviewing court directed a query to the magistrate wherein it was pointed out that although a suspended sentence was imposed, it had no period of suspension.

[3] The court a quo conceded that it was an oversight and asked the review court to make the period of suspension five months.

[4] The convictions are in order and they will be confirmed. However, a suspended sentence without a period of suspension is incomplete and defective. The period of suspension is provided for in s 297(1)(b) of the Criminal Procedure Act 51 of 1977 as amended. In the headnote of *State v Marungu*<sup>1</sup>, it is stated that the period of suspension must be recorded as it forms an integral part of any suspended sentence.

[5] Thus the sentence cannot be allowed to stand and it will be set aside. The five-month term proposed by the court a quo had almost elapsed by the time the query was returned to the high court. I also find it too short to have a meaningful deterrent

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<sup>1</sup> *State v Marungu* (CR 43/2013) [NAHCMD 230] (31 July 2013).

effect on the accused's behaviour. As such I regard a longer period of suspension as more suitable.

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

1. The convictions are confirmed.

2. The sentence is set aside and it is substituted with the following sentence:

The counts are taken together for sentencing and the accused is sentenced to pay a fine of N\$2000 or six months imprisonment fully suspended for one year on the conditions that:

- a) the accused is not convicted of assault with the intent to do grievous bodily harm committed during the period of suspension;
- b) the accused completes 400 hours of community service at Otavi Magistrates' Court under the supervision of Mr Sebulon Homseb between the hours of 08h00 until 13h00 during weekdays, which service is to commence on 30 January 2023.

<b>C M CLAASEN</b> <b>JUDGE</b>	<b>N N SHIVUTE</b> <b>JUDGE</b>