

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

<b>Case Title:</b> The State v Kain Tsuseb	<b>Case No:</b> CR 132/2023
<b>High Court MD Special Review No:</b> 1904/2023	<b>Division of Court:</b> High Court, Main Division
<b>Coram:</b> Liebenberg J <i>et</i> Shivute J	<b>Delivered:</b> 21 November 2023
<b>Neutral citation:</b> <i>S v Tsuseb</i> (CR 132/2023) [2023] NAHCMD 756 (21 November 2023)	
<b>ORDER:</b>  a) The conviction and sentence on count 1 are confirmed. b) The conviction on count 2 is confirmed. c) The sentence on count 2 is set aside and substituted with the following: N\$3000 or 3 months' imprisonment.	

**REASONS:**

LIEBENBERG J (SHIVUTE J concurring):

[1] This matter comes on special review from the magistrate's court for the district of Otjiwarongo where the accused was arraigned on count 1: Hunting huntable game – Contravening s 30(1)(a) read with sections 1, 30(1)(b), 30(1)(c), 85, 89, 89A of the Nature Conservation Ordinance 4 of 1975 (the Ordinance), as amended – count 2: Capturing game by snare, trap – Contravening s 40(1)(a)(ii) read with sections 1, 40, 85,86,87, 89 and 89A of the Ordinance. The accused pleaded guilty and following conviction, was sentenced to N\$16000 (Sixteen Thousand Namibia Dollars or two years' imprisonment on count 1 and to N\$3000 (Three Thousand Namibia Dollars) or ten months' imprisonment on count 2. The review turns only on the sentence in respect of count 2.

[2] The magistrate, upon inspection of the court order and following the sentence proceedings, realised that the imprisonment term in respect of count 2 was not in line with the penalty clause of the Ordinance in as far as the maximum term of imprisonment that may be imposed for a first conviction was concerned. On account of it having been too late for the court *a quo* to correct its sentence in terms of s 298 of the Criminal Procedure Act 51 of 1977, the only recourse was to send the matter on special review for the sentence to be corrected.

[3] The provisions of s 87 of the Ordinance are clear and stipulate that on conviction of a contravention of s 40(1)(a)(ii), an accused shall be liable to a fine not exceeding N\$6000 or to a period not exceeding six months' imprisonment, or to both such fine and imprisonment. The alternative sentence imposed by the court *a quo* of 10 months' imprisonment exceeds the maximum period of imprisonment that may be imposed and falls to be set aside.

[4] In the result, the following order is made:

- a) The conviction and sentence on count 1 are confirmed.

- b) The conviction on count 2 is confirmed.
- c) The sentence on count 2 is set aside and substituted with the following: N\$3000 or 3 months' imprisonment.

**J C LIEBENBERG**  
**JUDGE**

**N N SHIVUTE**  
**JUDGE**