

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case Title: <i>The State v Gerbardt Tobias and Uukongo Naftal</i>	Case No.: 26/2023 Tsumeb: TSU-CRM-876/2023
	Division of Court: Northern Local Division
Heard before: Honourable Lady Justice Salionga J <i>et</i> Honourable Mr Justice Kessler J	Delivered on: 25 July 2023
Neutral citation: <i>S v Tobias</i> (CR 26/2023) [2023] NAHCNLD 68 (25 July 2023)	
It is hereby ordered that: <ol style="list-style-type: none">1. The convictions on counts 1 and 2 in respect of both accused are confirmed.2. The sentences are confirmed however amended to read: 'Count 1: Each accused is sentenced to 2 (two) years imprisonment of which 1 (one) year is suspended for a period of 5 (five) years on condition that the accused is not convicted of robbery, committed during the period of suspension; Count 2: Each accused is sentenced to 2 (two) years imprisonment of which 1 (one) year is suspended for a period of 5 (five) years on condition that the accused is not convicted of robbery, committed during the period of suspension'.	
Reasons for the order:	

KESSLAU J (SALIONGA J concurring)

[1] The matter came to this court on review in terms of Section 302 of the Criminal Procedure Act 51 of 1977, as amended (the CPA). The accused persons were charged in the Magistrates Court of Tsumeb on two counts of robbery. After evidence was led both were convicted on both counts of robbery. The convictions appear to be in accordance with justice and will be confirmed.

[2] The only issue lies with the sentences imposed and in that regard the following query was forwarded to the magistrate:

'The condition of suspension reads that ". . . the accused persons are not convicted of the offence of robbery committed during the period of suspension". In its current form it will require that both accused should be convicted before the suspended sentence can be put into operation. Was that the intention of the Magistrate?' (Emphasis added)

[3] The magistrate in reply conceded that the sentence in its current form was not his intention and requested same to be amended.

[4] It is trite law that the condition of suspension attached to any sentence should not be ambiguous or vague to ensure that the accused person knows which conduct will bring about the imposition of such suspended part. The sentence, in its current form, is not clear and will be amended accordingly.

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

1. The convictions on counts 1 and 2 in respect of both accused are confirmed.
2. The sentences are confirmed however amended to read:
'Count 1: Each accused is sentenced to 2 (two) years imprisonment of which 1 (one) year is suspended for a period of 5 (five) years on condition that the accused is not convicted of robbery, committed during the period of suspension; Count 2: Each accused is sentenced to 2 (two) years imprisonment of which 1 (one) year is suspended for a period of 5 (five) years

on condition that the accused is not convicted of robbery, committed during the period of suspension'.	
Judge(s) signature	Comments:
KESSLAU J:	None
SALIONGA J:	None