

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case Title: <i>The State v Naufila Cahete</i>	Case No: 30/2023 Ondangwa: OND-CRM-3598/2023
	Division of Court: Northern Local Division
Heard before: Honourable Lady Justice Salionga J <i>et</i> Honourable Mr Justice Kessler J	Delivered on: 18 August 2023
Neutral citation: <i>S v Cahete</i> (CR 30/2023) [2023] NAHCNLD 85 (18 August 2023)	
It is hereby ordered that: <ol style="list-style-type: none">1. The conviction is confirmed.2. The sentence is amended as follows: 'The accused is sentenced to a fine of N\$ 1 000 or alternatively 3 (three) month's imprisonment.'3. If the initial fine imposed was paid, the difference should be refunded to the depositor.	
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).

[2] The accused was charged in the Magistrates Court of Ondangwa on a charge of contravening section 34(3) read with section 34(1) of the Immigration Control Act 7 of 1993: Found in Namibia without a valid permit and failing to report to an Immigration officer. The accused pleaded guilty and was convicted as charged following a proper questioning by the magistrate in terms of section 112(1)(b) of the Criminal Procedure Act 51 of 1977 as amended (CPA). Thereafter the accused was sentenced to a fine of N\$ 4 000 or 3 (three) months imprisonment.

[3] The conviction appears to be in accordance with justice and will be confirmed. The sentence however gave reason for a query to the magistrate in the following terms: 'Considering the penalty clause, allowing for a maximum fine of N\$ 4000 or one year imprisonment, how did the Magistrate calculate the monetary part when imposing a fine of N\$ 4 000 or 3 months imprisonment?'

[4] The penalty clause in section 34(3) of the Act provides for a fine not exceeding N\$ 4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and imprisonment. The sentence appeared harsh as the monetary part reflected the maximum allowed fine whilst the attached term of imprisonment was not proportional thereto. There should be some correlation in the ratio between the two, unless a valid reason is given during sentencing for not following this principle of proportionality.

[5] The magistrate in reply conceded that she intended to impose a sentence of N\$ 1 000 or 3 (three) months imprisonment. In the light of the concession the sentence will be amended.

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

1. The conviction is confirmed.
2. The sentence is amended as follows: The accused is sentenced to a fine of N\$ 1 000 or alternatively 3 (three) month's imprisonment.'
3. If the initial fine imposed was paid, the difference should be refunded to the depositor.

Judge(s) signature

Comments:

KESSLAU J:	None
SALIONGA J:	None