

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

SIMBARASHE MARISA

(HIGH COURT REVIEW CASE NO.: 151/06)

CORAM: MAINGA, J et VAN NIEKERK, J

Delivered: 2006 - 02 - 22

REVIEW JUDGMENT:

VAN NIEKERK, J: In this matter the accused was convicted by the Magistrate, Gobabis on three charges. They are (1) forgery; (2) uttering; and (3) c/sec 29(5) of the Immigration Control Act, 1993 (Act 7 of 1993).

He was sentenced as follows:

Count 1: N\$1000 - 00 or 12 months imprisonment.

Count 2: N\$1000 - 00 or 12 months imprisonment

Count 3: N\$4000 - 00 or 18 months imprisonment.

Count 1 and 2: sentences are ordered to run concurrently with sentence imposed on count 3".

The magistrate referred to the matter of *S v Lalsing* 1990 (1) SACR 443 (N) as authority for the order that the sentences on count 1 and 2 may run concurrently with the sentence imposed on count 3. Having read this judgment, as well as the judgment of *S v Mngadi* 1991 (1) SACR 313 (T) I am satisfied that it is competent to make such an order. However, I incline to the view of Melunsky, J in *S v Hutton* 1998 (2) SACR 474 (E) at 477 that in order to avoid confusion, it is desirable (as opposed to necessary), that a court should order that the sentence will run concurrently only if the fine is not paid.

The order made is the following:

The convictions and sentences on count 1, 2 and 3 are confirmed. Should any of the fines on count 1 and 2 not be paid the alternative sentence of imprisonment shall run concurrently with any alternative period of imprisonment served in respect of count 3.

VAN NIEKERK, J

I agree

MAINGA, J