

CASE NO.: CR124/2006

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

Versus

HENDRIK JOSSOP

[HIGH COURT REVIEW CASE NO.: 1725/06]

CORAM: VAN NIEKERK, J *et* PARKER, J

Delivered on:

2006.12.28

REVIEW JUDGMENT

PARKER, J.:

[1] The accused pleaded guilty to theft of two chickens in terms of Act 12 of 1990, as amended by Act 19 of 2004. He was convicted and sentenced to 24 months' imprisonment "wholly suspended for five years on condition accused does not within that period be convicted of an offence" under Act 12 of 1990, as amended by Act 19 of 2004.

[2] The formulation of the condition is wrong because the suspension is subjected to the condition that both the commission of the offence and the accused's conviction should be within the suspended period of five years. A condition of suspension should not be formulated in such a way as to include both the commission of the offence and the conviction of the accused in the period of suspension because, for all manner of reasons, it can happen that the conviction only follows after the period of suspension has expired. If that happens, the suspended fine or imprisonment cannot be put into operation because the accused has not been convicted within the period of suspension.

[3] Moreover, it comes to me with a sense of shock that the accused was sentenced to a term of 24 months' imprisonment for the theft of two chickens. The chickens were valued at N\$50.00. Besides, the record shows that the accused did "fully" compensate the complainant for his loss, albeit the record does not indicate in what form the restitution took. Additionally, the accused pleaded guilty in the magistrate's court. For these reasons, I am of the view that a sentence far less severe than 24 months' imprisonment is appropriate.

[4] In the result, the following orders are made:

- (1) The conviction is confirmed.
- (2) The sentence is set aside and the following substituted therefor:

Three months' imprisonment wholly suspended for five years on condition that the accused is not found guilty of an offence under Act 12 of 1990, as amended by Act 19 of 2004, committed during the period of suspension.

Parker, J

I agree.

Van Niekerk, J