

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

versus

**JAN GOLIATH**

**(HIGH COURT REVIEW CASE NO.: 1142/2007)**

**CORAM:** MAINGA, J. *et* PARKER, J.

Delivered on: 2007.08.15

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**REVIEW JUDGMENT**

**MAINGA, J.:** [1] Accused and a co-accused who was eventually acquitted appeared in the district Court at Karasburg on the charges of stock theft. He was correctly convicted and sentenced as follows:

*“Twenty four (24) months imprisonment of which 12 months is suspended for five years on condition accused does not within that period commit a similar offence i.e*

*theft read with the provisions of Act 12 of 1990 as amended by Act 19 of 2004.”*

[2] The condition of suspension is incorrect.

[3] But first a few remarks on the separation of trials which the magistrate had ordered in this case. When the charges were put to the two accused persons, accused no. 1, Jan Goliath pleaded guilty and his co-accused Josef Bekeer pleaded not guilty. Before accused no. 1 was examined in terms of Section 112 (1)(b) and the Court satisfying itself that he intended pleading guilty as is the practice, accused no. 2 was stood down, procedurally ordering a separation of trials. Accused no. 1 was examined in terms of Section 112 (1)(b) and having not been satisfied with his replies, a plea of not guilty was entered in terms of Section 113. Accused no. 2 was recalled to the dock and the trial continued.

[4] While the Court has a discretion to order a separation of trials, the procedure adopted by the Court in this case was muddled. The Court, as it is the rule of practice should have examined accused no. 1 who pleaded guilty and when satisfied that he intended pleading guilty, the Court could have ordered a separation of trials then. (See Section 157 of the Criminal Procedure Act 51 of 1977; *R v Zonele & Others* 1959 (3) SA 319(A) at 325 D-G; *S v Ntuli & Others* 1978 (2) SA 69 (A) at 72H-73A-C).

[5] Turning to the issue before this Court in this review matter, the importance of the word “committed” has been *ad*

*nauseam* emphasized in review matters but the emphasis has escaped the attention of some magistrates resulting in a huge burden on the review system. I decline to be repetitive of the same issue.

[6] The conviction and sentence, are confirmed, but the condition attached to the suspended sentence is varied to read:-

*“On condition that accused is not convicted of theft committed during the period of suspension.”*

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**MAINGA, J.**

I agree

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**PARKER, J.**