



REPUBLIC OF NAMIBIA

CASE NO. CC 31/2008

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

COLLEN KAVEZEMBURUKA TJIKUZU

CORAM: SHIVUTE, J

Heard on: 2011 April 11

Delivered on: 2011 May 18

SENTENCE

SHIVUTE, J: [1] The accused person in this matter was convicted of the offence of committing a sexual act with a child under the age of sixteen years in contravention of section 14 (1) (a) of the Combating of Immoral Practices Act, 1980 (Act No. 21 of 1980) as amended by section 2 of Act No. 7 of 2000.

Mr Basson, acting on the instructions of the Directorate of Legal Aid, represented the accused while Mr Konga appeared on behalf of the State.

[2] The accused testified under oath and placed his personal circumstances before this Court as follows:

He is 29 years old, single and a father of a child who will be turning 5 years during the course of this year. The child, a boy, is staying with the child's mother. The accused went to school up to Grade 7. He has been in custody for about 3 years and 7 months awaiting his trial. Before he was arrested, the accused was employed at Namibia Power Corporation (Nampower) as a casual worker. He was also helping his mother to look after cattle. The accused trained as a bricklayer and played soccer in his community. His mother is 53 years old who receives disability grant. His father is 63 years old. As a bricklayer, the accused had received N\$350.00 per month. He used the money to buy food and to pay for electricity bills. It was the accused person's testimony that he was sorry "for what happened" but he added that if he knew that the complainant was under the age of 16 years, he would not have had sexual intercourse with her. He stated furthermore that if he is given a second chance, he would try to further his studies and look for a job. He told the Court that his family was in a position to pay for him a fine of up to N\$3000.00. Apart from the above personal circumstances, the accused is also a first offender.

[3] Counsel for the accused submitted that although the accused was convicted of a serious offence, the Court should consider imposing a fine or a suspended sentence. He further submitted that if the accused knew that the complainant was under the age of 16, he would not have

committed this offence. He again urged the Court to consider the period the accused spent in custody before he was convicted. He referred this Court to several well-known authorities concerning sentence which I considered in arriving at the sentence.

[4] On the other hand counsel for the State drew the Court's attention to the penalty provision that the Court may impose a fine not exceeding N\$40,000.00 or a term of imprisonment not exceeding ten years or to both such a fine and such imprisonment. He submitted that although the Court may impose a fine, it nevertheless has discretion to impose an appropriate sentence. He also referred this Court to authorities in support of his submissions.

[5] The Court has considered the seriousness of the offence; the circumstances in which it was committed; the personal circumstances of the offender as placed on record; the period he spent in custody awaiting trial; the fact that he is a first offender and indeed the interests of society.

[6] The personal circumstances of the offender play an important role and must not be overlooked because, it is ultimately the accused that must be punished for the crime committed. Because personal circumstances of people are different and in the light of the consideration that the facts of each case are unique, sentences for similar offences will ultimately differ. *S v Tjiho* 1991 NR 361 (HC).

[7] After giving due consideration to all the relevant facts in this case and principles regarding sentence, it is my opinion that the following sentence will be appropriate in the circumstances:

Sixteen thousand Namibia dollar (N\$16,000.00) fine or four (4) years' imprisonment of which eight thousand (N\$8000.00) or two (2) years suspended for a period of five (5) years on condition that the accused is not convicted of any sexual offence committed during the period of suspension.

SHIVUTE, J

Appearance on behalf of the parties:

For the State:

Mr Konga

Instructed by:

Office of the Prosecutor-General

For the accused:

Mr Basson

Instructed by:

Directorate of Legal Aid