



CASE NO.: CR 04/2011

**IN THE HIGH COURT OF NAMIBIA
HELD AT OSHAKATI**

In the matter between:

THE STATE

and

NDESHIPANDA ALUVILU TJAMBIRU

(HIGH COURT REVIEW CASE NO.: 388/2010)

CORAM: LIEBENBERG, J. *el* TOMMASI, J. Delivered on:

15.02.2011

REVIEW JUDGMENT

LIEBENBERG, J.: [1] The accused and co-accused (accused no. 1) appeared in the Magistrate's Court, Opuwo on a charge of housebreaking with intent to steal and theft. Accused no. 1 pleaded not guilty to the charge; and whereas the accused pleaded guilty, he was questioned pursuant to the provisions of s 112 (1) (b) of the Criminal Procedure Act, 1977 (Act 51 of 1977) and convicted. The prosecution thereafter asked for a separation of trials; which was granted, and accused no. 1 stood down.

[2] This notwithstanding, the record of proceedings on sentence reflects the following:

"Court: Accused 1 - 2 sentence to a fine of N\$1 800.00 - each one thousand eight hundred N\$ dollars or (18) eighteen months imprisonment suspended for a period of (3) three years on condition that each accused is not convicted of housebreaking with intent to steal and theft committed during the period of suspension." (Emphasis provided)

[3] The magistrate, in a reply on a query directed to her enquiring as to why reference was made to the co-accused (accused no. 1) in the sentence if a separation of trials was ordered and the proceedings on sentence proceeded against accused no.2 only, stated that there was indeed a separation of trials and that she erred by including accused no. 1 in the sentence. She therefore requested that the sentence be corrected accordingly.

[4] Accused no.1 had already stood down after a separation of trials was ordered and was no longer before the court at the stage of sentencing. Therefore, his inclusion in the formulation of the sentence was clearly unintentional. The sentence needs to be corrected to reflect the correct position and to avoid any ambiguity as regards the suspended sentence imposed on accused no. 2.

[5] In the result, the Court orders:

1. The conviction is confirmed.
2. The sentence is amended to read: "Accused No.2 is sentenced to a fine of N\$1 800 or 18 months imprisonment, wholly suspended for a period of 3 years on condition that the accused is not convicted of housebreaking with intent to steal and theft, committed during the period of suspension."

LIEBENBERG, J

I concur.

TOMMASI, J