



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CR 29/2016

THE STATE

Versus

THOMAS NAKASOLE

**(HIGH COURT MAIN DIVISION REVIEW REF NO. 1131/2015)
(MAGISTRATE'S REVIEW NO.: 18/2015)**

Neutral citation: *S v Nakasole* (CR 29/2016) [2016] NAHCMD 101 (8 April 2016)

Coram: SHIVUTE, J *et* PARKER, AJ

Delivered: 8 April 2016

ORDER

- (a) The conviction is confirmed.
- (b) The sentence imposed is set aside and replaced with the following sentence:

Four hundred Namibia dollars fine or two months' imprisonment suspended as a whole for two years on condition that accused is not convicted of

possession of dependence-producing substance, contravening s 2(b) of Act 41 of 1971 committed during the period of suspension.

(c) The sentence is antedated to 8 August 2015.

REVIEW JUDGMENT

SHIVUTE J (PARKER, AJ concurring):

[1] The accused pleaded guilty to one count of possession of dependence-producing substance, namely cannabis valued at N\$9 contravening s 2(b) of Act 41 of 1971. The Court invoked the provisions of s 112(1)(a) of Act 51 of 1977. He was sentenced to two (2) months direct imprisonment wholly suspended for a period of (2) years.

[2] I queried the magistrate whether the sentence imposed was competent. Unfortunately the trial magistrate was not available. Another magistrate who was at the station responded to the query that the sentence imposed was incompetent, which is the correct position in law.

[3] In terms of s 112(1)(a) of the Act the sentence should be one with an option of a fine, which is not the case in this matter. Any term of imprisonment or any form of detention which is not coupled with a fine is not a competent sentence.

[4] Apart from the term of imprisonment imposed without the option of a fine, the sentence was suspended as a whole. However, there is no condition attached to the suspended sentence. The implication is that if accused is convicted again of contravening s 2(b) of the Act it will not be possible to put the suspended sentence into operation. There should be clear conditions attached to the suspension of

sentence. The accused should be convicted of a related offence committed during the period of suspension.

[5] The sentence imposed by the magistrate is not permissible and cannot be allowed to stand.

[6] In the result the following orders are made:

(a) The conviction is confirmed.

(b) The sentence imposed is set aside and replaced with the following sentence:

Four hundred Namibia dollars fine or two months' imprisonment suspended as a whole for two years on condition that accused is not convicted of possession of dependence-producing substance, contravening s 2(b) of Act 41 of 1971 committed during the period of suspension.

(c) The sentence is antedated to 8 August 2015.

N N Shivute
Judge

C Parker
Acting Judge

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