



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK  
JUDGMENT**

**Case no: CR 6/2016**

In the matter between:

**THE STATE**

**And**

**EBSON KAPUINI**

**ACCUSED**

**(HIGH COURT MAIN DIVISION REF. NO. 1848/2015)  
(MAGISTRATE SERIAL NO. 84/2015)**

**Neutral citation:** *State v Kapuini* (CR 6/2016) [2016] NAHCMD 25 (15 February 2016)

**Coram:** SIBOLEKA J AND USIKU J

**Delivered:** 15 February 2016

**Flynote:** Criminal law: A sentence erroneously imposed by a Magistrate is allowed to be sent on review for correction.

**Summary:** A sentence on dealing in dependence producing substances to wit cannabis valued at N\$ 18 480,00 was by mistake wholly suspended and hence a request to have the situation corrected accordingly.

**Held:** The route taken by the trial Court is in order. Sentence is accordingly corrected.

---

**ORDER**

---

In the result I make the following order:

The conviction is confirmed. The sentence imposed by the trial Court:

N\$15,000 (fifteen thousand) or in default of payment 24 (twenty four) months wholly suspended for a period of 3 (three) years on condition that the accused is not convicted of contravening section 2(a) and 2(b) of Act 41 of 1971 committed during the period of suspension” is substituted with the following:

N\$15 000,00 or in default of payment twenty four months imprisonment of which N\$ 7 500,00 or twelve months is suspended for five years on condition that the accused is not convicted of contravening section 2(a) or 2(b) of Act 41 of 1971 Dealing in/possession of dependence producing substance committed during the period of suspension.

The sentence is antedated 09 October 2015.

---

### **REVIEW JUDGMENT**

---

SIBOLEKA J (USIKU J concurring):

[1] The accused appeared in the Magistrate’s Court, Karasburg on the charge of dealing in dependence producing substance, namely cannabis valued at N\$ 18 480,00 in contravention of section 2(a) read with sections 1, 2(i) and or 2(ii), 8, 10, 14, and Part 1 of the Schedule of Act 41 of 1971 – Drugs Dealing in Dependence producing substance.

[2] He pleaded guilty and after questioning in terms of section 112(1)(b) of Act 51 of 1977 he was convicted and sentenced as follows:

“Fine of N\$ 15 000,00 or in default of payment 24 (twenty four) months imprisonment wholly suspended for a period of 3 (three) years on condition that the accused is not convicted of contravening section 2(a) or 2(b) of Act 41 of 1971 committed during the period of suspension ...”

[3] The covering letter from the trial Magistrate reads:

“RE: NOTE FOR THE REVIEWING JUDGE: CASE 826/2015: KARASBURG

1. Kindly bring the following to your attention.
2. I convicted and sentenced the accused in the above case. At sentencing I decided on a sentence half of which to be suspended. In writing out the sentence I however by mistake suspended the whole of the sentence. I realized my mistake too late ... .
3. I therefore beg the Honourable Reviewing Judge to consider to set the sentence aside and to remit the matter for sentencing afresh.”

[4] The request made by the Trial Court is in order.

[5] In the result I make the following order:

[5.1] The conviction is confirmed. The sentence imposed by the trial Court:

N\$ 15,000 (fifteen thousand) or in default of payment 24 (twenty four) months wholly suspended for a period of 3 (three) years on condition that the accused is not convicted of contravening section 2(a) and 2(b) of Act 41 of 1971 committed during the period of suspension” is substituted with the following:

N\$ 15 000,00 or in default of payment twenty four months imprisonment of which N\$7 500,00 or twelve months is suspended for five years on condition that the accused is not convicted of contravening section 2(a) or 2(b) of Act 41 of 1971 Dealing in/possession of dependence producing drugs committed during the period of suspension.

The sentence is antedated 09 October 2015.

---

A M SIBOLEKA  
Judge

---

D N USIKU  
Judge