

**REPUBLIC OF NAMIBIA**



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

**REVIEW JUDGMENT**

Case no: CR 35/2018

In the matter between:

**THE STATE**

v

**BENJAMENI BENNIE**

**ACCUSED**

**(HIGH COURT MAIN DIVISION REVIEW REF NO. 315/2018)**

**Neutral citation:** *S v Bennie* (CR 35/2018) [2018] NAHCMD 132 (18 May 2018)

**Coram:** USIKU J et UNENGU AJ

**Delivered:** 18 May 2018

**Flynote:** Sentence – Suspended sentence – Conditions – Framing of – Conditions not making sense – Court on review reformulating sentence in clearer way – Court setting aside the sentence and replacing it with another sentence.

**Summary:** The accused person was charged with a crime of theft before the Magistrate's Court for the district of Grootfontein, held at Otavi. He was convicted on his own plea of guilty and sentenced accordingly.

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### ORDER

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N\$5000 or 18 months imprisonment plus a further five years imprisonment suspended in *toto* for five years on following conditions.

1. That the accused is not convicted of a crime of theft, committed during the period of suspension.
  2. That the accused compensate the complainant in an amount of N\$24 059-80 the first payment of N\$459 be made on or before the 02 May 2018, and thereafter payment in the sum of N\$400 be made on the last day of each month succeeding.
  3. The final payment to be made on or before the 30 April 2023.
  4. All payments to be made through the Clerk of the Otavi Magistrate's Court.
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### REVIEW JUDGMENT

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USIKU J, (Unengu AJ concurring):

[1] The accused appeared before the Magistrate's Court at Otavi on a charge of theft to which he pleaded guilty and questioned in terms of section 112 (2) of Act 51 of 1977 as amended. He was thereafter convicted on his own plea of guilty and sentenced accordingly.

[2] When the matter came before me on review, I found the proceedings to be in accordance with justice but the formulation of the sentence was found to be wrong. Firstly the accused was sentenced as follows:

‘To pay a fine of N\$5000-00 or in default of payment to imprisonment for a period of 18 months. The accused was also sentenced to five years imprisonment wholly suspended for a period of five years on condition that the accused is not convicted of a charge of theft by false pretences committed during the period of suspension and that the accused compensate the complainant the amount of N\$24 059-80.

The payment deferred to be commended on or before 02 May 2018 of which the initial payment of be N\$459-80 and then subsequent monthly payments of N\$400-00 on or before the last day of the month and final payment to be on or before 30 April 2023 to be paid to Otavi Magistrate Court.’

[3] I have decided to quote the above sentence verbatim because the framing of the sentence is not clear. The proceedings are in accordance with justice but the formulation of the sentence is not only unclear but it is also bad in law.

[4] The formulation of a sentence must be clear for all to see so that its terms can be carried out without any difficulty.

[5] In the result, the conviction is confirmed but the sentence is set aside and the following is put in its place.

N\$5000 or 18 months imprisonment plus a further five years imprisonment suspended in *toto* for five years on following conditions.

1. That the accused is not convicted of a crime of theft, committed during the period of suspension.
2. That the accused compensate the complainant in an amount of N\$24 059-80, the first payment of N\$459 be made on or before the 02 May 2018, and thereafter payment in the sum of N\$400 be made on the last day of each month succeeding.

3. The final payment to be made on or before the 30 April 2023.
4. All payments to be made through the Clerk of the Otavi Magistrate's Court.

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D N USIKU  
Judge

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E P UNENGU  
Acting Judge