

Case Title: <i>The State v Issaskan Ubiteb and Another</i>	Case No: CR 18/2020
High Court MD Review No: 552/2020	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Mr Justice Sibeya (<i>Acting</i>)	Delivered on: 25 March 2020
Neutral citation: <i>S v Ubiteb and Another</i> (CR 18/2020) [2020] NAHCMD 112 (25 March 2020)	
The order: <ol style="list-style-type: none"> a. The convictions in respect of accused 1 and 2 are confirmed. b. The sentence in respect of accused 1 and 2 are amended to read as follows: ‘Three years imprisonment of which one year is suspended for a period of five years on condition accused is not convicted of Robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977, as amended committed during the period of suspension.’ 	
Reasons for order:	
LIEBENBERG J (concurring SIBEYA, AJ) <p>[1] This matter came on review in terms of s 302 (1) of the Criminal Procedure Act 51 of 1977 (the CPA) as amended.</p> <p>[2] The accused persons appeared in the magistrate’s court for the district of Outjo on a charge of robbery and were convicted on their pleas of guilty. The convictions are in order and will be confirmed on review. They were each sentenced to: ‘Three (3) years’ imprisonment of which one (1) year is suspended for a period of five (5) years on condition that the accused is not convicted of Robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of</p>	

1977 as amended during the period of suspension’.

[3] The way the sentences are formulated is problematic in the sense that the word ‘committed’ has been omitted as part of the condition of suspension. To this end the sentence in respect of each accused need to be corrected.

[4] Therefore, it is ordered:

a. The convictions in respect of accused 1 and 2 are confirmed.

b. The sentence in respect of accused 1 and 2 are amended to read as follows:

‘Three years imprisonment of which one year is suspended for a period of five years on condition accused is not convicted of Robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977, as amended committed during the period of suspension.’

J C LIEBENBERG JUDGE	O SIBEYA JUDGE