

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK  
REVIEW JUDGMENT

<b>Case Title:</b> <i>The State v Heinrich Meintjies</i>	<b>Case No:</b> CR 73/2020
<b>High Court MD Review No:</b> 1101/2020	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Judge Salionga <i>et</i> Judge Claasen	<b>Delivered on:</b> 28 September 2020
<b>Neutral citation:</b> <i>S v Meintjies</i> (CR 73/2020) [2020] NAHCMD 444 (28 September 2020)	
<b>The order:</b>  a) The convictions in respect of both counts are confirmed. b) The sentences are substituted to read as follows: Count 1: A fine of N\$2000 or 8 months' imprisonment of which N\$ 1000 or 4 months' imprisonment are suspended for 5 years on the condition that the accused is not convicted for assault by threat committed during the period of suspension. Count 2: A fine of N\$500 or 60 days imprisonment. The sentences are antedated to 22 July 2020.	
<b>Reasons for order:</b>	

Claasen J (concurring Salionga J )

1. This is a review in terms of section 302(1) of the Criminal Procedure Act 51 of 1977 as amended, (the CPA).
2. The accused appeared before the Magistrate of Keetmanshoop on two counts. The first charge was that of assault by threat, read with the Combating of Violence Act 4 of 2003. He pleaded guilty and after questioning the magistrate altered his plea in terms of s 113 of the CPA. After evidence was led he was convicted accordingly. The sentence in respect of this count was a fine of N\$ 2000 or 24 months imprisonment of which N\$ 1000 or 12 months imprisonment are suspended on the condition that the accused is not convicted for assault by threat committed during the period of suspension. The second count was a charge of *crimen injuria*. Before the evidence was led, the accused pleaded guilty to count 2 and was convicted in terms of s 112(1)(a) of the CPA. The sentence on count 2 was a fine of N\$ 500 or 6 months imprisonment.
3. No issues arose in respect of the convictions, but the reviewing judge addressed a query regarding the sentence, in particular about the ratio/proportionality of the fine and the term of imprisonment which was imposed in the alternative. Though the question was posed in respect of the sentence on count 2, the magistrate's reply predominantly focused on domestic violence, which according to the charge sheet, was only in respect of count 1. In view of that, it is accepted that she motivated the sentences in respect of both counts. Evidently, the same issue is notable in respect of the sentence on count 1 and thus forms part of the issue before the reviewing court.
4. In the reply to the query the magistrate referred to two murder cases that were committed in a domestic violence setting and which emphasised domestic violence as a factor justifying more robust sentences. The reviewing court has no issue with that principle at all. It is apparent that the magistrate missed the point of

the query which simply was whether the monetary part of the sentence was proportional to the period of imprisonment? Thus, the question was not answered.

5. The *court a quo* gave elaborate reasons for the respective sentences from which it can be gathered that the complainant and the accused are mother and son respectively, which was a factor in aggravation. However, the court also expressed amongst others that the accused was not a danger to the community and that a custodial sentence would be inappropriate and gravely shocking. In respect of count 1, the court *a quo*'s point of departure was a fine of N\$ 2000 and a fine of N\$ 500 was imposed in respect of count 2.
6. Valuable general guidelines were set out in *S v Mynhard; S v Kuinab*<sup>1</sup> at para H as follows:
  - (a) Fines should be used mainly as punishment for lesser offences.
  - (b) The imposition of a fine is an alternative punishment i.e. the purpose of a fine is to punish an accused without incarcerating him. To impose a fine which an accused can obviously not pay is to impose direct imprisonment in the guise of an alternative term of imprisonment.
  - (c) Although not capable of exact calculation, the alternative of imprisonment must be proportionate to the fine and the gravity of the offence.
  - (d) The presiding officer must obtain the necessary facts before deciding upon a fine. Without the facts he cannot exercise his discretion judicially. Of vital importance is the ability of the accused to pay a fine. Here, not only the accused's income is of importance, but also his assets and liabilities and other means of obtaining funds.
  - (e) The amount should usually fall within the means of the accused. Exceptions to the rule would be prevalence of a particular offence as well as high fines prescribed in statutes indicating the seriousness of the offence.
  - (f) A dilemma might arise in the situation where a fine would be an appropriate sentence but because of the gravity of the offence or a legislative injunction the amount of the fine must be set so high that the accused, on the facts

<sup>1</sup> 1991 NR 336 (HC).

before the Court, cannot pay it.

7. In the case at hand, there is no problem in respect of the magistrate's assessment that fines were appropriate. The only problem was that the imprisonment terms were heavier in relation to the fines. It thus stands to be set aside on account of being disproportionate to the fines.

8. For these reasons, I make the following orders:

a) The convictions on both counts are confirmed.

b) The sentences are substituted to read as follows:

Count 1: A fine of N\$2000 or 8 months' imprisonment of which N\$1000 or 4 months' imprisonment are suspended for 5 years on condition that the accused is not convicted for assault by threat committed during the period of suspension.

Count 2: A fine of N\$500 or 60 days imprisonment.

The sentences are antedated to 22 July 2020.

C CLAASEN  
JUDGE

J SALIONGA  
JUDGE