

REPUBLIC OF NAMIBIA



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

Case Title: <i>The State v Nyambe Mubita and Jeremia Konjeni Lukas</i>	CR No.:25/2021
	Division of Court: Main Division
Heard before: Honourable Mr Justice Liebenberg et Honourable Mrs Justice Shivute J	Delivered on: 15 April 2021
Neutral citation: <i>S v Mubita</i> (CR 25/2021) [2021] NAHCMD 159 (15 April 2021)	
The order: <ol style="list-style-type: none">1. The convictions are confirmed.2. The sentence is amended to read; Each accused is sentenced to a fine of N\$ 1000 or in default of payment 3 months' imprisonment.3. The sentence is antedated to 19 January 2021.	
Reasons for order:	
SHIVUTE J (Liebenberg J concurring): <ol style="list-style-type: none">1. The matter came before this court on automatic review in terms of section 304 of Act 51 of 1977. Two accused persons were convicted on a charge of theft. They were sentenced to a fine of N\$1000 or in default of payment 3 months' imprisonment.2. The conviction is in order however, the issue lies with the manner in which the	

sentence was framed given that the sentence is in respect of two accused persons.

3. The following query was directed to the magistrate:

‘The accused persons were convicted of theft and sentenced to a fine of N\$ 1000 in default of payment 3 months’ imprisonment. What did the magistrate mean by the above sentence? Is it not too vague?’

4. The magistrate in her reply, conceded that the sentence is vague because there is more than one accused person who was sentenced for theft and the sentence does not differentiate if they are to serve the sentence together or separately. She stated that the sentence which she intended to impose was that ‘Each accused is sentenced to a fine of N\$ 1000 or in default of payment 3 months’ imprisonment.

5. It is trite law that where more than one accused persons are sentenced for the same offence, the sentence must clearly and specifically be framed to reflect that “each” accused have to serve the sentence.

6. From the record, it is apparent that the sentence is not properly framed as it is not clear how both accused persons were going to serve the sentence. In view of the magistrate’s concession, the sentence has to be corrected to reflect the missing word.

7. In the result:

1. The convictions are confirmed.
2. The sentence is amended to read; Each accused is sentenced to a fine of N\$ 1000 or in default of payment 3 months’ imprisonment.
3. The sentence is antedated to 19 January 2021.

NN SHIVUTE	J C LIEBENBERG JUDGE

JUDGE	
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