

REPUBLIC OF NAMIBIA



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

Case Title: <i>S v Jason Hanjengo</i>	Case No: CR 52/2021
High Court MD Review No: 672 /2021	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Lady Justice Shivute	Delivered on: 2 June 2021
Neutral citation: <i>S v Hanjengo</i> (CR 52/2021) [2021] NAHCMD 271 (2 June 2021)	
The order: (a) The conviction in respect of each accused is confirmed. (b) The sentence is altered to read as follows: Each accused is sentenced to N\$6000 (six thousand) fine or in default of payment 12 (twelve) months' imprisonment, of which N\$ 1000 (one thousand) or 3 (three) months' imprisonment is suspended for a period of 5 (five) years on condition that the accused is not convicted of theft, committed during the period of suspension.	
Reasons for order:	
Shivute J, (concurring Liebenberg J) [1] The matter was submitted to this court for review in terms of Section 302 (1) of the Criminal Procedure Act (Act 51 of 1977) as amended, hereinafter referred to as the Act).	

[2] The two accused persons were charged with theft and convicted accordingly following their trial. The conviction is in order.

[3] However, they were sentenced as follows:

'N\$6000.00 (Six Thousand Namibian Dollars) or 12 (Twelve) months imprisonment of which N\$ 1000.00 (One Thousand Namibian Dollars) or 3 (Three) months imprisonment is suspended for a period of 5 (Five) years on condition that the accused is not convicted of Theft, committed during the period of suspension.'

[3] I inquired from the learned magistrate as to what he meant by the abovementioned sentence and whether the sentence is not too vague.

[4] The magistrate responded as follows:

1. I refer to the review cover page and the sentence as reflected in the record, my observation is that the sentence therein seems to be a little different compared to what the Honourable Review Judge quoted in the query to be the sentence which was found to be too vague.

2. I would like to submit that the sentence imposed on each Accused person should read as follows: A fine of Six Thousand Namibian Dollars (N\$6000-00) or Twelve (12) months imprisonment of which One Thousand Namibian Dollars (N\$ 1000-00) or Three (3) months imprisonment is suspended for a period of Five (5) years on condition that accused is not convicted with the crime of Theft, committed during the period of suspension.

3. In my humble opinion, the above sentence is justified in that it imposes a punishment on the accused persons for the crime they committed while on duty. Further, part of the sentence was suspended in order to deter the accused persons from committing the crime of theft in the foreseeable future.

4. I submit myself to the further instructions from the Honourable Reviewing Judge'

[5] The learned magistrate's concession as to how the sentence should read is correctly made as it is clear that the framing of the sentence on the review sheet is quite

confusing, the matter involved two accused persons and the formulation of the sentence did not indicate as being applicable to both accused persons separately or jointly, which cannot be an appropriate sentence.

[6] Since the sentence is bound to lead to uncertainty and misinterpretation, it has to be altered.

[7] In the result the following order is made:

(a) The conviction in respect of each accused is confirmed.

(b) The sentence is altered to read as follows:

Each accused is sentenced to N\$6000 (six thousand) fine or in default of payment 12 (twelve) months' imprisonment, of which N\$ 1000 (one thousand) or 3 (three) months' imprisonment is suspended for a period of 5 (five) years on condition that accused is not convicted of theft, committed during the period of suspension.

N N SHIVUTE JUDGE	J C LIEBENBERG JUDGE