

REPUBLIC OF NAMIBIA

HIGH COURT OF  
WINDHOEK  
REVIEW JUDGMENT



NAMIBIA MAIN DIVISION,

<b>Case Title:</b> <i>The State v Sylvester Ameb</i>	<b>Case No:</b> <b>CR 12/2022</b>
<b>High Court MD Review No:</b> 1051/2021	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Mr Justice Liebenberg <i>et</i> Mrs Justice Shivute	<b>Delivered on:</b> 23 March 2022
<b>Neutral citation:</b> <i>Ameb v S</i> (CR12/2022) [2022] NAHCMD 129 (23 March 2022)	
<b>The order:</b> (a) The conviction on count 1 is confirmed. (b) The conviction and sentence on count 2 are confirmed. (c) The sentence on count 1 is set aside and substituted with the following:  'The accused is sentenced to a fine of N\$ 500 or 1(one) month imprisonment, suspended <i>in toto</i> for a period of 3(three) years on condition that the accused is not convicted of the offence of malicious damage to property, committed during the period of suspension.'  (d) The sentence is antedated to 16 November 2021.	
<b>Reasons for order:</b> SHIVUTE J (concurring Liebenberg J) [1] The accused faced a charge of malicious damage to property (count 1) in the Magistrate's Court for the district of Grootfontein. He pleaded guilty and the court invoked	

section 112(1) (a) of the Criminal Procedure Act<sup>1</sup> (herein after referred to as the Act). He was convicted as charged and sentenced to 1 (one) month imprisonment wholly suspended for a period of 5 years on condition that the accused is not convicted of the offence of malicious damage to property committed during the period of suspension. In addition, the accused was convicted and sentenced on a second count of assault with intent to do grievous bodily harm read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

[2] This court has no qualm with the conviction and sentence on count 2 and same will be confirmed.

[3] When the matter came on review in terms of section 302 of the Act, a query was directed to the magistrate enquiring as to the competency of the sentence imposed on count 1. The magistrate conceded that the sentence imposed was incompetent because it does not provide for a sentence of imprisonment without the option of a fine. The learned magistrate suggested that the sentence be amended to that of N\$500 or 1 (one) month imprisonment, wholly suspended for 5 years on condition that accused does not commit a similar offence during the suspension period.

[4] Section 112(1) (a) of the Act, provides that where the accused pleads guilty and the presiding magistrate is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine exceeding N\$6 000, the court may convict on the mere plea of guilty and in terms of subsection (i) impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine.

[5] In the instant matter, the court *a quo* sentenced the accused to direct imprisonment, thus rendering the sentence incompetent because it is inconsistent with the provisions of section 112(1)(a)(i) of the Act. In view thereof, the sentence cannot be

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<sup>1</sup> Criminal Procedure Act 51 of 1977

permitted to stand.

[6] In the result, it is ordered that :

- (a) The conviction on count 1 is confirmed.
- (b) The conviction and sentence on count 2 are confirmed.
- (c) The sentence on count 1 is set aside and substituted with the following:

‘The accused is sentenced to a fine of N\$ 500 or 1(one) month imprisonment, suspended in *toto* for a period of 3(three) years on condition that the accused is not convicted of the offence of malicious damage to property, committed during the period of suspension.’

- (d) The sentence is antedated to 16 November 2021.

<b>NN SHIVUTE JUDGE</b>	<b>JC LIEBENBERG JUDGE</b>