

REPUBLIC OF NAMIBIA



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

Case Title: The State v Brendan Claasen The State v Rudi Rudolf Hendricks The State v Dawid Haiman	Case No: CR 52/2022
High Court Review No. Ref No.: 570/2022 Ref No.: 868/2022 Ref No.: 867/2022	Division of Court: High Court Main Division
Heard before: The Honourable Lady Justice D Usiku <i>et</i> Honourable Lady Justice Claasen	Delivered on: 10 June 2022

Neutral citation: *S v Claasen; S v Hendricks; S v Haiman* (CR 52/2022) [2022] NAHCMD 291 (10 June 2022)

The following orders are made correcting the sentences:

1. In *S v Claasen*, High Court Ref.: No 570/2022:

Accused is sentenced to a fine of N\$ 1 500.00 or in default of payment 3 (three) months imprisonment of which N\$500.00 or one (1) month imprisonment is suspended for a period of five years on condition that the accused is not convicted for the offence of common assault

read with the provisions of the combating of domestic violence Act, Act 4 of 2003, committed during the period of suspension.

2. In *S v Hendricks*, High Court Ref.No.: 868/2022

A fine of N\$ 2000.00 (two thousand) or in default of payment, 8 (eight) months imprisonment of which N\$ 500.00 (five hundred) or 2 (two) months imprisonment is suspended for a period of 3 years on condition that the accused is not convicted of possession of stolen stock, committed during the period of suspension.

3. In *S v Haiman*, High Court Ref.No.: 867/2022

Sentenced to 12 (twelve) months imprisonment of which 2 (two) months is suspended for a period of 5 (five) years on condition that accused is not convicted for the offence of assault by threat, committed during the period of suspension.

Reasons for order:

[1] All three cases cited above came before this court on automatic review in terms of s 302(1) of the Criminal Procedure Act 51 of 1977. These cases originated from the same Magistrates' Court and were presided over by the same Magistrate. The sentences imposed in each of these matters were vague, specifically few omissions and the exclusion of the word "committed". I posed a query in respect of the *S v Claasen*¹ matter but found that the other two captured the same error/omission.

[2] In *S v Claasen*, the accused was convicted of the offence of assault – assault common read with the provisions of the Combating of Domestic Violence Act, Act 4 of 2003.

The sentence read as follows:

'Accused is sentenced to fine (sic) of N\$ 1 500 or in default of payment 3 (three) months imprisonment of which N\$ 500 or one (1) month imprisonment is suspended for a period of five (5) (sic)

¹ *S v Claasen*, High Court Ref.: No 570/2022.

on condition that accused is not convicted for the offence assault common (sic) read with the provisions of the Combating of Domestic Violence Act, Act 4 of 2003, during the period of suspension.’

[3] The court directed a query to the learned magistrate that the framing of the sentence is confusing regarding the suspension of the sentence. The magistrate conceded that it was an error on his part. Although it was not part of the query, we noticed that the condition of suspension did not include the word “committed”.

[4] The importance of the word “committed” has been over emphasized by this court in various review matters.² However, it is unfathomable to notice how many Magistrates completely heed no mind to the emphasis placed on the importance of the word “committed.” The flagrant disregard of these judgments are not condoned. The learned magistrate is warned to pay more attention to the wording of his sentences’. It is a cause for concern. Any sentence that omits the word “committed” is not a competent sentence. This omission stands to be aligned and corrected.

[5] In respect of *S v Claasen*, in this case the word committed is omitted and the condition attached to the suspended sentence has to be varied.

[6] In respect of the other two matter the omissions of the word “committed” is aligned and corrected. The convictions in all the cases are confirmed. However the sentences are to be altered.

[7] In the result, the sentences are altered as follows:

7.1. In *S v Claasen*, High Court Ref.: No 570/2022:

² *S v Shapange* (CR 5/2021) [2021] NAHCNLD 06 (29 January 2021); *S v Negongo* (CR 10/2019) [2020] NAHCNLD 19 (4 February 2020); *S v Mashuna*; *S Mupopya* (CR 6/2021) [2021] NAHCNLD 07(29 January 2021); *S v Lukeiko* (CR 25/2021) [2021] NAHCNLD 104 (3 November 2021); *S v Farmer* (CR 64/2014) [2014] NAHCMD 328 (5 November 2014) paragraph 6 approving and applying *S v Malgas en Andere* 1979 (3) SA 178 (A) at 181F-H; *S v Titus* 1996 (1) SACR 540 (C) at 544f-g and *S v Khoseb* 1972 (2) SA 218 (SWA)

Accused is sentenced to a fine of N\$ 1 500.00 or in default of payment 3 (three) months imprisonment of which N\$500.00 or one (1) month imprisonment is suspended for a period of five years on condition that the accused is not convicted for the offence of common assault read with the provisions of the combating of domestic violence Act, Act 4 of 2003, committed during the period of suspension.

7.2. In *S v Hendricks*, High Court Ref.No.: 868/2022

A fine of N\$ 2000.00 (two thousand) or in default of payment, 8 (eight) months imprisonment of which N\$ 500.00 (five hundred) or 2 (two) months imprisonment is suspended for a period of 3 years on condition that the accused is not convicted of possession of stolen stock, committed during the period of suspension.

7.3. In *S v Haiman*, High Court Ref.No.: 867/2022

Sentenced to 12 (twelve) months imprisonment of which 2 (two) months is suspended for a period of 5 (five) years on condition that accused is not convicted for the offence of assault by threat, committed during the period of suspension.

D USIKU JUDGE	C CLAASEN JUDGE