

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION WINDHOEK

REVIEW JUDGMENT

Case Title: <i>The State v Bradley Kubeb</i>	Case No: CR 57 /2022
High Court MD Review No: 352/2021	Division of Court: Main Division
Heard before: Hon Judge Claasen et Hon Judge Usiku	Delivered on: 21 June 2022
Neutral citation: <i>S v Kubeb</i> (CR 57/2022) [2022] NAHCMD 310 (21 June 2022)	
The order <ol style="list-style-type: none">1. The conviction in respect of contempt of court is confirmed.2. The sentence is set aside and substituted with a sentence of N\$ 100 or ten days imprisonment.3. The sentence is antedated to 23 February 2022.	
Reasons for order:	
CLAASEN J (concurring USIKU J):	

[1] The accused herein was convicted in the district court of Grootfontein for contempt of court and a sentence of N\$ 600 or 3 months' imprisonment was imposed. The case was sent on review without a statement by the magistrate who dealt with the matter.

[2] A two page-pronged query followed from the review court. The first issue related to the absence of the statement and the second concerned itself with the sentence imposed.

[3] The magistrate replied and this time around the statement, albeit scant, was attached to the proceedings. He also conceded that the sentence he imposed was not in order.

[4] After having read the statement that was provided after the query, the review court is satisfied that the conviction is in accordance with justice.

[5] The need for a statement by the magistrate is clearly set out in the law. Section 108(2) of the Magistrates Courts Act 32 of 1944 as amended (the MCA) stipulates that: 'In any case in which the court commits or fines any person under the provisions of this section, the judicial officer shall without delay transmit to the registrar of the court of appeal for consideration and review of a judge in chambers, a statement, certified by such judicial officer to be true and correct, of the grounds and reasons of his proceedings, and shall also furnish to the party committed a copy of such statement.'

[6] The magistrate, correctly so, conceded that the sentence he imposed cannot stand. Section 108(1) of the MCA, being the relevant penalty clause, provides for a fine not exceeding N\$ 100 or three months' imprisonment or to such imprisonment without the option of a fine. While this ratio of N\$ 100 and three months may have been proportional many years ago, it is my view that it is no longer the case. The penalty clause has not been amended in recent times thus, the court has to remain within that parameters.

[7] Judging from the sentence imposed, it appears that the magistrates' intention was to afford the accused the option of a fine. In substitution of the sentence, I will

remain in line with that intention, and adjust the term of imprisonment to be a bit more proportional.

[8] In general, magistrates must acquaint themselves with the principles set out in the numerous review judgments¹ on this topic.

[9] In the result, the following order is made:

1. The conviction in respect of contempt of court is confirmed.
2. The sentence is set aside and substituted with a sentence of N\$ 100 or ten days imprisonment.
3. The sentence is antedated to 23 February 2022.

C M CLAASEN	D N USIKU
JUDGE	JUDGE

¹ *S v Kandume* (CR 116/2021) [2021] NAHCMD 558 (30 November 2021), *S v Iyambula* (CR 44/2018) [2018] NAHCMD 105 (2 October 2018), *S v Kuutondokwa* CR 210/2015][2015] NAHCMD 33 (24 July 2015), *S v L Samaria* Case No (P) 1760/2020 delivered 08/02/2011 and *S v Pieters Abel* (CR 72/2006) delivered 11/08/2006.