

REPUBLIC OF NAMIBIA

HIGH COURT OF
WINDHOEK
REVIEW JUDGMENT



NAMIBIA MAIN DIVISION,

Case Title: The State versus Renette Steenkamp Anzelm Gei-Khaub Marchello Cloete	Case No: 113/2022 Division of Court: Main Division
Heard before: Hon. Justice Shivute <i>et</i> Hon. Justice January	Delivered on: 21 October 2022
Neutral citation: <i>S v Steenkamp and 2 Others</i> (CR 113/2022) [2022] NAHCMD 575 (21 October 2022)	
The order: <p>(a) The conviction in respect of accused 1 and 2 is confirmed.</p> <p>(b) The sentence imposed is confirmed but amended to read as follows: Each accused is sentenced to a fine of N\$2000 or in default of payment, two months' imprisonment wholly suspended for three years on condition that the accused is not convicted of theft committed during the period of suspension.</p>	
Reasons for order:	
SHIVUTE J (JANUARY J concurring): [1] The accused persons were charged with the crime of theft in the Magistrate's Court in the district of Luderitz. The state withdrew the charge against accused three. The accused persons pleaded guilty to the charge. The court proceeded to apply section 112(1)(a) of the Criminal Procedure Act 51 of 1977 (CPA) in respect of accused 1 and 2	

upon the request of the State. The accused were then convicted and sentenced to 'a fine of N\$ 2000 or two months' imprisonment wholly suspended for three years on condition accused are not convicted of theft committed during period of suspension'.

[2] I directed a query to the magistrate to enquire the following:

- '1. How many accused persons were convicted in this case?
2. Under which provisions of the law was the sentence withdrawn against accused 3?
3. What does the court mean by imposing the sentence that reads as follows?
Accused 1 and 2 fined N\$ 2000 or two months' imprisonment wholly suspended for 3 years on condition accused are not convicted of theft committed during the period of suspension? Is the sentence not too vague?
4. What does it mean for a magistrate to affix a signature on the review sheet?'

[3] The magistrate replied that accused 1 and 2 were the only ones that were convicted as the matter was withdrawn against accused 3. He further responded that the reason he recorded the withdrawal on the charge sheet under the area where the sentence is recorded is due to a lack of space on the record front page. He then made a suggestion as to how the condition of sentence should read, however the court is not satisfied with his suggestion and would amend it to read as follows:

Each accused is sentenced to a fine of N\$2000 or in default of payment, two months' imprisonment wholly suspended for three years on condition that the accused is not convicted of theft committed during the period of suspension.

[4] In the *State v Andrew*, the following was stated:

'The matter involves 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. The sentence should be clear so that the accused persons can know what is expected of them.'¹

[5] I also observed that the name of accused 3, Marcello Cloete was wrongly reflected on the review cover sheet and under sentencing it indicates that the matter is withdrawn against accused 3, however, the name of accused 3 should not have been reflected on

¹ *State v Andrew* (CR 11/2020) [2020] NAHCMD 52 (17 February 2020).

the review cover sheet and the withdrawal should not appear under sentencing at all. It is therefore, necessary for magistrates to ensure that review records are without mistakes before sending it off to the review court. For a magistrate to affix his signature on the record means that the magistrate is satisfied that everything on the record is correct. *S v Omar* dealt with the same issue and the review court stated the following:

'It is trite that a magistrate is under a duty to comprehensively check review records before same is certified. This duty cannot be said to be upheld by the magistrate in this instance.'²

[6] Further, a review sheet should correspond with the record of proceedings so as to reflect what transpired in the court a quo.³

[7] There has been no misdirection found in respect of the conviction and sentence. However, the wording of the formulation of the sentence cannot be allowed to stand.

[8] In the result, it is ordered:

(a) The conviction in respect of accused 1 and 2 is confirmed.

(b) The sentence imposed is confirmed but amended to read as follows:

Each accused is sentenced to a fine of N\$2000 or in default of payment, two months' imprisonment wholly suspended for three years on condition that the accused is not convicted of theft committed during the period of suspension.

N N SHIVUTE Judge	H C JANUARY Judge

² *S v Omar* (CR 50/2020) [2020] NAHCMD 297 (17 July 2020).

³ *State v Andrew* (CR 11/2020) [2020] NAHCMD 52 (17 February 2020).