



“ANNEXURE 11”  
Practice Direction 61  
**IN THE HIGH COURT OF NAMIBIA**

<b>Case Title:</b>  THE STATE v LUCY AFRIKANER	<b>Case No: CR 1/2023</b>  <b>Division of Court:</b> High Court, Main Division
<b>Heard before:</b> Honourable Lady Justice Usiku et Claasen, J	<b>Date of hearing:</b> 3 February 2023 <b>Delivered on:</b> 3 February 2023
<b>Neutral citation:</b> <i>S v Afrikaner</i> (CR 1/2023) [2023] NAHCMD 27 (3 February 2023)	
<b>COURT ORDER</b>	
<ol style="list-style-type: none"><li>1. The conviction is confirmed.</li><li>2. The sentence is set aside and the following is put in its place: The accused is sentenced to pay a fine of N\$900 (Nine Hundred Namibia Dollars) or in default of payment 3 (three) months imprisonment wholly suspended for a period of 3 (three) years on condition that accused is not convicted of malicious damage to property committed during the period of suspension.</li></ol>	
<b>REASONS FOR ORDERS:</b>	

USIKU J, (CLASSEN J concurring)

[1] The matter before me is an automatic review from the magistrates' court in terms of s 302 (1) of the Criminal Procedure Act 51 of 1977.

[2] In this matter the accused appeared before the Keetmanshoop magistrate court charged with the offence of malicious damage to property. The matter was disposed of in terms of s 112 (1) (a) of the Criminal Procedure Act 57 of 1977. Where after accused was given a suspended sentence for an indefinite period of time.

[3] The sentence reads as follows,

'The accused was sentenced to 3 (three) months imprisonment of which 3 (three) months is suspended for a period of 1 (one) month on condition that the accused is wholly suspended on condition that accused repairs the broken window on or before 31 August 2022.'

[4] On the consideration of the review, the following query was directed to the learned magistrate:

'Can the learned magistrate explain whether the manner in which the suspended sentence is framed is in order, as a suspended sentence cannot be imposed for an undetermined period.'

[5] The learned magistrate conceded that the suspended sentence is not framed properly and responded as follows:

'My intention was that the sentence should read as follows fine "N\$ 900.00 (Nine Hundred Namibia Dollars) or in default of payment 3 (three) months imprisonment wholly suspended for a period of 3 (three) years on condition that accused is not convicted of malicious damage committed during the period of suspension, (2) furthermore the accused repairs the broken window'.

[6] The concessions made by the learned magistrate are indeed correctly made and I am of the view that the sentence imposed is not in accordance with justice because the manner in which it was formulated is not only unclear but it is also bad in law. The formulation of a sentence must be clear for all to see so that its terms can be carried out without any difficulty.

[7] In the case of *S v Nuuyoma*,<sup>1</sup> Cheda J dealt with suspended sentencing and explained as follows:

‘Another aspect of this sentence which requires a comment is the way it was couched. The sentence was not clearly couched. A sentence must be clear to the accused and most importantly the suspended sentence’.

[8] The purpose of suspension of the whole or part of the sentence is to encourage offenders to restrain themselves from committing further offences, so that they can rehabilitate themselves.

[9] In *S v Scheepers*,<sup>2</sup> the court laid down the purpose of a suspended sentence where the learned judge stated:

‘A suspended sentence has two beneficial effects: it prevents the offender from going to the goal... The second effect of a suspended sentence, to my mind is of very great importance. The man has a sentence hanging over him. If he behaves himself he will not have to serve it. On the other hand, if he does not behave himself he will have to serve it.’

[10] in *S v Nuuyoma*, (supra) the court stated that:

‘In *casu* the sentence is silent, in addition, it is not stated how long the suspended sentence is to operate. The suspended sentence cannot be left open-ended. There is, therefore, a great need for the court to apply its mind when it comes to the period of suspension.’

<sup>1</sup> (CR 12/2018) [2018] NAHCNLD 20 (08 March 2018).

<sup>2</sup> 2006 (1) SACR 72 (SCA) at para 1.

[11] The formulation of the suspended sentence must therefore be clear to the offender in order for him/her to understand the period within which he/she is required to comply.

[12] In the result, the following orders are made:

1. The conviction is confirmed.

2. The sentence is set aside and the following is put in its place:

2.1 The accused is sentenced to a fine of N\$900 (Nine Hundred Namibia Dollars) or in default of payment 3 (three) months imprisonment wholly suspended for a period of 3 (three) years on condition that accused is not convicted of malicious damage to property committed during the period of suspension.

**D USIKU**  
**JUDGE**

**C CLAASEN**  
**JUDGE**