

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK  
REVIEW JUDGMENT  
PRACTICE DIRECTIVE 61

<b>Case Title:</b>  The State v Gianni Charles	<b>Case No:</b>  CR 105/2023
<b>High Court MD Review No:</b> 1521/2023	<b>Division of Court:</b> High Court, Main Division
<b>Coram:</b> Liebenberg J <i>et</i> Shivute J	<b>Delivered:</b> 16 October 2023
<b>Neutral citation:</b> <i>S v Charles</i> (CR 105/2023) [2023] NAHCMD 652 (16 October 2023)	
<b>ORDER:</b>  <ol style="list-style-type: none"><li>1. The conviction is confirmed.</li><li>2. The sentence is amended to read: The accused is fined N\$1000 or 6 months' imprisonment, wholly suspended for 2 years, on condition that the accused is not convicted of theft committed during the period of suspension.</li></ol>	
<b>REASONS:</b>	

LIEBENBERG J (SHIVUTE J concurring):

[1] This is a review from the Magistrate's Court for the district of Windhoek where the accused was arraigned on a charge of theft of meat valued at N\$532,69. The accused pleaded guilty and the matter was finalised in terms of s 112(1)(a) of the Criminal Procedure Act 51 of 1977 (the CPA) with the accused being convicted on his mere plea of guilty. He was subsequently sentenced to 'N\$1000 or 6 months' imprisonment wholly suspended for 2 years on condition that that accused should not be convicted of theft during the period of suspension.'

[2] When the matter came on review, the omission of the word 'committed' in the sentence imposed was queried. The court *a quo* concedes that this was an oversight on its part and accordingly prays that the sentence be amended and confirmed.

[3] It must be noted that when the query was directed to the court *a quo*, what it did was to attach a duplicate charge sheet now containing the missing word 'committed'. This was also done in the record of proceedings post the proceedings. Despite these additions, the omission on the original charge sheet persists. It is highly irregular to make changes to the record of proceedings and it is discouraged in the strongest terms.

[4] The inclusion of the word 'committed' was highlighted in *S v Mbathera*<sup>1</sup> as playing a vital role in that it informs the accused of the period, in future, within which s/he must not be convicted of the prohibited offence committed during the period of suspension. It follows therefore that, the sentence in this instance must be corrected to include the omitted word.

[5] It must be emphasized that a sentence cannot be altered after the fact by the trial court. The original charge sheet remains defective, regardless.

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

1. The conviction is confirmed.
2. The sentence is amended to read: The accused is fined N\$1000 or 6 months' imprisonment, wholly suspended for 2 years, on condition that the accused is not

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<sup>1</sup> *S v Mbathera* (CR 54/2019) [2019] NAHCMD 291 (15 August 2019).

convicted of theft committed during the period of suspension.

**J C LIEBENBERG**  
**JUDGE**

**N N SHIVUTE**  
**JUDGE**