

REPUBLIC OF NAMIBIA



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

Case Title: The State v Shoombé Erastus	Case No: CR 120/2023
High Court MD Review No: 1527/2023	Division of Court: High Court, Main Division
Coram: Liebenberg J <i>et</i> Shivute J	Delivered: 13 November 2023
Neutral citation: <i>S v Erastus</i> (CR 120/2023) [2023] NAHCMD 729 (13 November 2023)	
ORDER: <ol style="list-style-type: none">1. The conviction is confirmed.2. The sentence is confirmed but amended to include the word 'years' reflecting the period for which the sentence is suspended.	
REASONS:	
LIEBENBERG J (SHIVUTE J concurring):	

[1] Serving before court for determination is a review matter stemming from the Magistrate's Court for the District of Grootfontein where the accused was convicted on one count of malicious damage to property and sentenced as follows:

'A fine of N\$3000 or nine months' imprisonment which is wholly suspended for a period of three on the following conditions'

[2] The conviction and sentence will be confirmed. The only qualm this court has is that the court *a quo*, in sentencing the accused, omitted to specify in its sentence, the period of suspension. This can be seen from the quoted portion of the sentence in para 1 above.

[3] The trial court concedes and acknowledges that it was an oversight on its part and thus asks that the sentence be amended. This concession is properly made.

[4] At present, the sentence as it stands, is ambiguous in that it does not specify the period of suspension, ie whether the period of suspension is three years or three months. Differently put, it does not constitute a period of suspension as would be envisaged in s 297 of the Criminal Procedure Act 51 of 1977 (the CPA).

[5] In order for an accused to understand the period within which he/she must comply with the conditions of suspension of a sentence, the formulation thereof must be clear.¹

[6] Based on the foregoing, the sentence as it reads must be amended.

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

1. The conviction is confirmed.
2. The sentence is confirmed but amended to include the word 'years' reflecting the period for which the sentence is suspended.

¹ *S v Mutafela* (CR 45/2022) [2022] NAHCMD 261 (24 May 2022).

J C LIEBENBERG JUDGE	N N SHIVUTE JUDGE