

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

<b>Case Title:</b>  <i>The State v Ndala Adriano and 2 others</i>	<b>Case No: CR 147/2023</b>
<b>High Court MD Review No:</b> 1554/2023	<b>Division of Court:</b> High Court, Main Division
<b>Coram:</b> Shivute J <i>et</i> January J	<b>Delivered on:</b> 13 December 2023
<b>Neutral citation:</b> <i>S v Adriano</i> (CR 147/2023) [2023] NAHCMD 820 (13 December 2023)	
<b>ORDER:</b>  1. The convictions are confirmed. 2. The sentence is altered as follows:  Each accused: Five (5) years' imprisonment of which one (1) year is suspended for a period of five (5) years on condition that the accused is not convicted of the offence of stock theft, committed during the period of suspension.	

**REASONS FOR ORDER:**

SHIVUTE J (JANUARY J concurring):

[1] This is a review matter which came before me in terms of s 302(1) of the Criminal Procedure Act 51 of 1977 as amended ('the CPA').

[2] The three accused persons appeared in the Magistrate's Court for the district of Rundu on a charge of stock theft. All three accused pleaded guilty and the magistrate proceeded to question each of them in terms of s 112(1)(b) of the CPA. After questioning the three accused, the court was satisfied that each of them admitted all the allegations set out in the charge and found them guilty as charged.

[3] The court proceeded to sentence the accused persons as follows:

'Each accused: Five (5) years' imprisonment of which one (1) year is suspended for a period of five (5) years on the condition that he accused are not convicted of the offence of Stock theft, committed during the period of suspension.'

[4] The three accused were properly convicted. However, the condition of the suspension of sentence is vague. Accordingly, I enquired from the magistrate what he meant by saying ' . . . on the condition that he accused are not convicted of the offence of Stock Theft, committed during the period of suspension' and further, whether the condition of the suspension of sentence is not too vague. The magistrate's response was:

' . . . The sentence should read: Each accused: Five (5) years imprisonment of which one (1) year is suspended for a period of five (5) years on the condition that the accused is not convicted of the offense of stock theft, committed during the period of suspension.'

[5] From the above response, it is accepted that the magistrate rightfully conceded that it was a wrong choice of wording.

[6] It must be clear to each accused person whose subsequent conviction during the period of suspension will bring their own suspended sentence into operation.

[7] As a result, the convictions and sentence are confirmed, however, considering the above and to remove any cause of confusion or uncertainty, the sentence is altered as follows:

Each accused: Five (5) years' imprisonment of which one (1) year is suspended for a period of five (5) years on condition that the accused is not convicted of the offence of stock theft, committed during the period of suspension.

**N N SHIVUTE  
JUDGE**

**H C JANUARY  
JUDGE**