

**REPUBLIC OF NAMIBIA**

NOT REPORTABLE



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI**

**JUDGMENT**

Case no: CR 12/2013

In the matter between:

**THE STATE**

and

**POPYENI ANGULA**

**High Court NLD Review Case Ref No.: 82/2013**

**Neutral citation:** *The State v Angula* (CR 12/2013) [2013] NAHCNLD 30 (21 May 2013)

**Coram:** LIEBENBERG J and TOMMASI J

**Delivered:** 21 May 2013

**Flynote:** Criminal Procedure – Sentence – Conditions of suspended sentence must be clear – Accused must know what should be avoided so that the suspended sentence does not become operative.

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## ORDER

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*The sentence imposed is amended to read:*

*‘Five (5) years’ imprisonment of which eighteen (18) months’ is suspended for five (5) years on condition that the accused is not convicted of stock theft, committed during the period of suspension.’*

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## JUDGMENT

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LIEBENBERG J (TOMMASI J concurring):

[1] The accused appeared in the Magistrate’s Court, Okahao on a charge of theft, read with the provisions of the Stock Theft Act, 1990 (Act 12 of 1990) for having stolen 40 goats, and after the court heard evidence, he was convicted as charged. The conviction is in accordance with justice and will be confirmed. However, the sentence imposed – besides being extremely lenient given the number of stock involved – is not properly framed and needs to be corrected.

[2] The accused was sentenced to ‘5 (five) years imprisonment of which 18 months is suspended for 5 (five) years on condition that accused is not convicted of contravening Section 14 as amended by Act 19 of 2004 committed during the period of suspension’. Section 14 of Act 12 of 1990 does not refer to offences that could be committed under the Act, but is the penalty

clause and provides for mandatory sentences applicable to certain sections of the Act, when contravened.

[3] The general principle in the formulation of a sentence is that the conditions of suspension must be clear, not only so that the accused can understand what he or she has to do or avoid to ensure that the suspended sentence is not put into operation, but also that the court which later has to decide whether or not to put the sentence into operation, is able to determine the ambit of the conditions of suspension. When the conditions are not clear that court might conclude that the accused did not properly understand the conditions; or itself might be uncertain as to whether or not there was a breach of the conditions. In such instance the accused must be given the benefit of the doubt and the suspended sentence will not be put into operation. Obviously, that would defeat the purpose of the sentence imposed and will not be in the interest of justice. *In the present case where the accused is convicted of committing an offence under common law, it seems prudent to make specific reference to the prohibited crime, so that the accused knows, in order to avoid the suspended sentence being put into operation, which crime(s) he or she must steer clear from within the period of suspension. The condition of suspension of the sentence in the present instance is such that neither the accused nor a subsequent court would be able to determine the ambit thereof and it therefore has to be corrected.*

[4] *In the result, the sentence imposed is amended to read:*

*'Five (5) years' imprisonment of which eighteen (18) months' is suspended for five (5) years on condition that the accused is not convicted of stock theft, committed during the period of suspension.'*

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JC LIEBENBERG  
JUDGE

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MA TOMMASI  
JUDGE