

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI

REVIEW JUDGMENT

CASE NO: CR 09/2018

THE STATE

v

IITU KATALI

ACCUSED

HIGH COURT NLD REVIEW CASE REF NO: **426/2017**

Neutral citation: *S v Katali* (CR 09/2018) [2018] NAHCNLD 13 (09 February 2018)

Coram: CHEDA J et JANUARY J

Delivered: **09 February 2018**

Flynote: An assault as read with the sections of the Combating of Domestic Violence Act, Act 4 of 2003 invariably attracts a prison term in order to stem the tide of violence.

Summary: Accused a 36 year old man assaulted his mother by twisting her arm and felling her down. The trial court upon conviction sentenced him to a fine of N\$1000 or 6 months imprisonment. The sentence was manifestly lenient and was set aside with the concession of the learned trial magistrate. Matter was referred back for trial de novo before a different magistrate.

ORDER

1. The proceedings in this matter are quashed and set aside.
 2. The matter is referred back for a trial de novo, before a different magistrate.
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JUDGMENT

CHEDA, J (JANUARY J concurring):

[1] The above case referred falls within the category of review matter. Upon perusal my attention was aroused by the apparent leniency of the sentence passed by the learned trial magistrate. I raised a query with the learned trial magistrate.

[2] The circumstances surrounding the commission of the offence are outlined below. The accused, a 36 year old man was charged with assault as read with section 21 of The Combating of Domestic Violence Act, Act 4 of 2003. He pleaded guilty, was duly convicted and sentenced to pay a fine of N\$1000 or 6 months imprisonment.

[3] The basis of the domestic violence is that he assaulted his mother by twisting her arm and felling her down. In aggravation the complainant pleaded with the court to mete out a severe sentence because he was in the habit of harassing her and she, therefore, wanted him to be put away from her for a long period.

[4] Despite, the plea from an 80 year old mother of the accused, the learned trial magistrate was not at all persuaded as he imposed a fine. In response to my query the learned magistrate conceded the error in imposing a lenient sentence in the circumstances.

[5] I should add that, the issue of domestic violence is now a never ending song, so to speak. Therefore, every judicial officer has an unfailing duty to stop the song from playing endlessly at the expense of society's suffering. There is a plethora of

case authorities where the courts have held that stiff sentences, invariably prison sentences should be imposed as a general rule. If the courts fail to pay heed to this clarion call, then all national efforts to stem this violent tide will come to naught.

[6] In light of the learned trial magistrate's concession, it is appropriate that the proceedings be quashed and the following is the order:

1. The proceedings in this matter are quashed and set aside.
2. The matter is referred back for a trial de novo, before a different magistrate.

M Cheda
Judge

HC January
Judge