

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

REVIEW JUDGMENT

“ANNEXURE 11”

Case Title: <i>S v Teodor Kambonde</i>	CR NO: 43/2020
	Division of Court: Northern Local Division
Heard before: Honourable Lady Justice Salionga J <i>et</i> Honourable Lady Justice Diergaart AJ	Delivered on: 3 August 2020
Neutral citation: <i>S v Kambonde</i> (CR 43/2020) [2020] NAHCNLD 100 (3 August 2020)	
IT IS ORDERED THAT: 1. The conviction on malicious damage to property read with the provisions of the Combating of Domestic Violence Act 4 of 2003 is corrected by deleting the following “read with the provisions of the Combating of Domestic Violence Act 4 of 2003” to reflect a conviction on malicious damage to property. 2. The sentence is confirmed.	

Reasons for the above order:

Salionga J (Diergaardt AJ concurring):

[1] The accused was charged with malicious damage to property read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

[2] Accused pleaded guilty and was convicted in terms of section 112 (1) (a) of Act 51 of 1977. He was sentenced to a fine of N\$ 1000 (thousand dollars) or 3 (three) months imprisonment.

[3] On review I directed the following query to the magistrate “on what basis was the accused convicted as charged if no relationship between the accused and complainant was alleged and whether the offence of malicious damage to property read with the provisions of the Combating of Domestic Violence Act 4 of 2003 is a minor offence to be finalized in terms of section 112 (1) (a) of the Act.

[4] In her reply, the magistrate conceded that after going through the record, she erroneously convicted the accused ‘as charged’ while domestic relations was not established. She requested the reviewing judge to amend the conviction accordingly. On the second query she responded that by looking at the value involved the court a quo considered the said offence as minor.

[5] With regard to the first query, although the charge was drafted to be read with the provisions of Combating of Domestic Violence Act, no relationship was alleged to have existed and as such the accused could not have been convicted ‘as charged.’ In my view the concession was properly made. On the second query the Court is satisfied with the

magistrate's explanation.

[6] In the result:

1. The conviction of malicious damage to property read with the provisions of the Combating of Domestic Violence Act 4 of 2003 is corrected to reflect a conviction of malicious damage to property.
2. The sentence is confirmed.

Judges(s) signature	Comments:
SALIONGA J:	
DIERGAARDT AJ:	