

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI
REVIEW JUDGMENT

“ANNEXURE 11”

Case Title: <i>The State v Nikanor Pombili Namweda and Isak Mwamononghoshi</i>	CR No.: 40/2020 Case No.: EENHANA 106/2020
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J <i>et</i> Honourable Ms. Justice Diergaardt AJ	Delivered on: 30 June 2020
Neutral citation: <i>S v Namweda</i> (CR 40/2020) [2020] NAHCNLD 81 (30 June 2020)	
The order: 1. The conviction for Housebreaking with intent to steal and theft is confirmed; 2. The sentence of five years direct imprisonment both of which two years are suspended for five years on conditions both are committed as charge during period of suspension is corrected to read: Both accused are sentenced to five years imprisonment each of which two years are suspended in terms of section 297 of Act 51 of 1977 on condition that the accused is not convicted of committing the offence of housebreaking with intent to steal and theft committed during the period of suspension.	

Reasons for the order	
Diergaardt AJ (January J concurring):	
<p>[1] The matter came before me on automatic review in terms of section 304 of Act no 51 of 1977.</p>	
<p>[2] This court has in numerous cases disapproved and pronounced itself that magistrates should not suspend sentences on condition that an accused should not commit 'a similar, similar offence or 'committed as charged'.</p>	
<p>[3] The condition of suspension is too wide and is bound to lead to uncertainty and misinterpretation. [See: <i>S v Simon</i> 1991 NR 104 (HC); <i>Hiemstra's Criminal Procedure</i>, Issue 2 at 28-79 to 28-80, Conditions must be clear: Commentary on section 297 of the Criminal Procedure Act].</p>	
<p>[4] The conditions must be clear and must refer to one or more specific offences, not to a group of offences. [See: <i>Hiemstra's Criminal Procedure</i>, Issue 2 at 28-79: Commentary on section 297 of the Criminal Procedure Act].</p>	
Judge(s) signature	Comments:
Diergaardt AJ:	
January J:	