

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

REVIEW JUDGMENT

Case Title: <i>The State v Jeremia Matheus and Moses Matheus</i>	CR No.:10 /2021 Case No.: 47/2020 Division of Court: Northern Local Division
Heard before: Honourable Ms. Justice Salionga J et Honourable Mr. Justice Munsu AJ	Delivered on: 4 March 2021
Neutral citation: <i>S v Matheus</i> (CR 10/2021) [2021] NAHCNLD 18 (4 March 2021)	
The order: <ol style="list-style-type: none">1. The conviction is confirmed.2. The sentence is amended to read; The convictions on both count one and two are taken together for purpose of sentencing and each accused is sentenced to 18 months imprisonment.	
Reasons for order:	
SALIONGA J (Munsu AJ concurring): <ol style="list-style-type: none">1. The matter came before this court on automatic review in terms of section 304 of Act 51 of 1977. Two accused persons were charged and correctly convicted on the charge of robbery and malicious damage to property. Both counts were taken together for sentencing purpose and they were sentenced to 18 months	

imprisonment.

2. The reviewing judge has no issue with the conviction but with the way in which the sentence was framed regard must be had that two accused persons were convicted and sentenced. Thus a query was directed to the magistrate to clarify how both accused were going to serve the sentence of 18 months imposed.
3. The magistrate in her reply stated that the sentencing part is confusing and it was just a human error. She conceded that the court was supposed to indicate the word "each" on the sentence. However in her opinion that is a minor error which can be corrected on review.
4. It is trite law that where more than one accused persons are sentenced for the same offence the sentence must clearly and specifically be framed to reflect that "each" and not "both" accused have to serve the sentence.
5. From the record it is apparent that the sentence is not properly framed as it is not clear how both accused persons were going to serve the sentence of 18 months imprisonment imposed. In view of the magistrate's concession, the sentence has to be corrected to reflect the missing word.
6. In the result:
 1. The convictions are confirmed.
 2. The sentence is amended to read; The conviction on both count one and two are taken together for purpose of sentencing and **each** accused is sentenced to 18 months imprisonment.

J T SALIONGA
JUDGE

D C MUNSU
ACTING JUDGE