

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

Case Title: The State v Phillip Nghidimbwa-Wike Ndawedwa, Robert Murenga Kasiki and Timoteus Hangulo Mateus	Case no: CR 23/2022 Tsumeb: TSU-CRM-3463/2020
	Division of Court: Northern Local Division
Heard before: Honourable Mr Justice Munsu AJ <i>et</i> Honourable Mr Justice Kessler AJ	Delivered on: 28 April 2022
Neutral citation: <i>S v Ndawedwa</i> (CR 23/2022) [2022] NAHCNLD 48 (28 April 2022)	
It is hereby ordered that: <ol style="list-style-type: none">1. The conviction and sentence of accused 1 and 2 on the main charge are confirmed.2. The conviction of contempt of court dated 10 March 2022 in respect of accused 2 and 3 are confirmed however the sentence is amended to read: Each accused is sentenced to a fine of N\$ 100 or three months imprisonment.3. The fines paid in excess of the amended sentence should be reimbursed to the depositor.	
Reasons for the order:	

KESSLAU AJ (MUNSU AJ concurring):

[1] The matter comes before this court on automatic review.

[2] The conviction and sentence on the main charge appears to be in accordance with justice and are confirmed.

[3] The query of the reviewing court was with contempt of court proceedings that took place in terms of Section 108¹ during the trial. Accused 2 and 3 were convicted of contempt of court *in facie curiae* for misbehaving in court. The accused were thereafter each sentenced to a fine of N\$500 or three months imprisonment. The proceedings and subsequent convictions are in order. The Magistrate was requested to comment on the competence of the sentence considering the penalty clause applicable.

[4] The Magistrate in reply, conceded that he imposed an incompetent sentence in that he was misled by the amended South African version of the Act which has an increased penalty clause for the said offence. He furthermore confirmed that both accused 2 and 3 paid the fines imposed.

[5] The penalty clause in Section 108(1) of the Magistrates Court Act 32 of 1944, allows a maximum fine of N\$100 or three months imprisonment or both such fine and imprisonment. The sentence imposed for the contempt of court is therefor defective and will be amended.

[6] In the result the following orders are made:

1. The conviction and sentence of accused 1 and 2 on the main charge are confirmed.
2. The conviction of contempt of court dated 10 March 2022 in respect of accused 2 and 3 are confirmed however the sentence is amended to read: Each accused is sentenced to a fine of N\$ 100 or three months imprisonment.

¹ Magistrates Court Act 32 of 1944.

3. The fines paid in excess of the amended sentence should be reimbursed to the depositor.	
Judge(s) signature	Comments:
KESSLAU AJ:	
MUNSU AJ:	