

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

<b>Case Title:</b> <i>The State v Shitaatala Setson</i>	<b>Case no:</b> CR 31/2022 OKAHAO 163/21
	<b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Lady Justice Salionga J et Honourable Mr Justice Kessler AJ	<b>Delivered on:</b> 6 July 2022
<b>Neutral citation:</b> <i>S v Setson</i> (CR 31/2022) [2022] NAHCNLD 69 (6 July 2022)	
<b>It is hereby ordered that:</b> <ol style="list-style-type: none"><li>1. The conviction is confirmed.</li><li>2. The sentence is set aside and replaced with the following: The accused is sentenced to 9 (nine) months imprisonment suspended in total for a period of 3 (three) years on the condition that the accused is not convicted of housebreaking with the intent to steal and theft, committed during the period of suspension.</li></ol>	
<b>Reasons for the order:</b>	

KESSLAU AJ (SALIONGA J concurring):

[1] The matter comes before this court on automatic review in terms of Section 302 of the Criminal Procedure Act 51 of 1977 as amended, (the CPA).

[2] The accused was properly convicted in the Magistrates Court of Okahao upon a plea of guilty on a charge of housebreaking with the intent to steal and theft. The accused was then sentenced to '9 months imprisonment which is wholly suspended for a period of 3 years on condition that the accused does not commit the crime of housebreaking with intent to steal and theft during the period of suspension'.

[3] A query was directed to the learned magistrate regarding the formulation of the sentence and in particular the absence of the requirement for the accused to be convicted of the mentioned offense. The magistrate, in reply, conceded to the error.

[4] The sentence, as it stands, does not require the accused to be convicted of the offense only that he commit it during the period of suspension. A suspended sentence can only be put into operation upon the conviction of a subsequent offense.

[5] In *S v Skrywer* it was held that:

'A condition of suspension must comply with the following two requisites:

1. It must be related to the offence or crime in question, i.e. it must not be so wide that  
it has no nexus with the offence concerned.
2. It must be clear and the accused should know exactly what conduct may lead to his  
having to serve the sentence.'<sup>1</sup>

[6] The conviction of the accused appear to be in accordance with justice and will be confirmed. The sentence will be amended to include the requirement of conviction.

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<sup>1</sup> *S v Skrywer* 1990 NR 343 (HC).

[7] In the result the following order is made:

1. The conviction is confirmed.
2. The sentence is set aside and replaced with the following: The accused is sentenced to 9 (nine) months imprisonment suspended in total for a period of 3 (three) years on the condition that the accused is not convicted of housebreaking with the intent to steal and theft, committed during the period of suspension.

<b>Judge(s) signature</b>	<b>Comments:</b>
KESSLAU AJ:	None
SALIONGA J:	None