

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

REVIEW JUDGEMENT

Case Title: The State v Simon Ngejama	Case no: CR 49/2023
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice Munsu, J <i>et</i> Honourable Mr. Justice Kessler J	Delivered on: 05 December 2023
Neutral citation: <i>S v Ngejama</i> (CR 49/2023) [2023] NAHCNLD 136 (05 December 2023)	
The order: <ol style="list-style-type: none">1. The conviction is confirmed.2. The sentence of a fine of N\$ 1000 or 6 months imprisonment wholly suspended for a period of 2 years on condition that the accused is not convicted of malicious damage to property committed during the period of suspension is confirmed.3. The additional condition attached, ordering the accused to attend counselling is set aside.	
Reasons for the order:	
MUNSU, J (KESSLAU, J concurring):	
[1] This matter came on automatic review in terms of s 302 of the Criminal Procedure Act	

51 of 1977 (the CPA). The accused was arraigned in the Outapi Magistrates' Court on a charge of malicious damage to property. The accused pleaded guilty to the charge, however, his plea was altered to one of not guilty in terms of s 113 of the CPA. After evidence was led, the accused was found guilty as charged. He was sentenced to a fine of N\$ 1000 or 6 months imprisonment wholly suspended for a period of 2 years on the usual conditions. A further order was made as follows:

'An additional condition was attached that the accused attends counselling with the Ministry of Gender. The session to commence from a date to be determined by the social worker and for a continuous period as the social worker may deem fit.'

[2] I enquired from the learned magistrate as follows:

'Given that the Social Worker is to determine the duration of the counselling, for instance, the counselling is to continue for the next 20 years, is the sentence competent?'

[3] In reply, the learned magistrate stated that:

'...the learned Magistrate replies that there was supposed to be a definite time up to which the counselling by the social worker is to be complete in order for the sentence to be competent. The accused have to be called to court to be informed of that part of the sentence.'

[4] The concession was properly made. The court was supposed to specify the maximum duration of the condition and should not have left it entirely to the opinion of the social worker.¹

[5] Given that more than eight months have passed since the date of sentence, it will not be practical to remit back the matter for sentencing. I say so for a number of reasons, among others, there will be a need for evidence to be led regarding the extent to which the additional condition was implemented by the social workers in order to determine the sentence afresh. Also, the court will be required to determine the duration of the counselling retrospectively after the accused might have already completed his counselling sessions. The appropriate cause to take, in my view, is to set aside the additional condition.

¹ See S Terblanche (2007) *Guide to Sentencing in South Africa*, 2nd Ed at 370.

[6] In the result, the following order is made:

1. The conviction is confirmed.
2. The sentence of a fine of N\$ 1000 or 6 months imprisonment wholly suspended for a period of 2 years on condition that the accused is not convicted of malicious damage to property committed during the period of suspension is confirmed.
3. The additional condition attached, ordering the accused to attend counselling is set aside.

Judge(s) signature	Comments:
MUNSU, J.	NONE
KESSLAU, J.	NONE