

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

REVIEW JUDGEMENT

<b>Case Title:</b> The State v Nghilundile Petrus      Accused 1 Thomas Johannes      Accused 2	<b>Case no:</b> CR 50/2023  <b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Mr. Justice Munsu, J <i>et</i> Honourable Mr. Justice Kessler J	<b>Delivered on:</b> 08 December 2023
<b>Neutral citation:</b> <i>S v Petrus and Another</i> (CR 50/2023) [2023] NAHCNLD 138 (08 December 2023)	
<b>The order:</b> <ol style="list-style-type: none"><li>1. The convictions are confirmed.</li><li>2. The sentence is amended to read: Each accused is sentenced to 2 (two) years imprisonment.</li></ol>	
<b>Reasons for the order:</b>	
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 as amended (the CPA). The accused were charged and convicted of housebreaking with intent to steal and theft. The convictions are in order and will be confirmed.	

[2] The sentence as per the record reads as follows:

'The accused person therefore both sentenced to 2 years direct imprisonment'

[3] The sentence on the review cover sheet reads as follows:

'BOTH DIRECT IMPRISONMENT FOR BOTH ACCUSED PERSONS.'

[4] In *S v Gaoxab*<sup>1</sup> the court had the following to say:

'[4]...It is trite that where more than one accused person is sentenced for the same offence, the sentence must clearly and specifically be framed to reflect that "each" accused has 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 imposed...'

[5] The sentence imposed in the present matter was not properly framed and has to be amended.

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

1. The convictions are confirmed.
2. The sentence is amended to read: Each accused is sentenced to 2 (two) years imprisonment.

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

<sup>1</sup> *S v Gaoxab* (CR 101/2021) [2021] NAHCMD 510 (3 November 2021).

