

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION OSHAKATI

REVIEW JUDGMENT

<b>Case Title:</b> The State v Jeremia Nathipite Shipanga	<b>Case No.:</b> CR 4/2023
<b>Heard before:</b> Honourable Ms Justice Salionga et Honourable Mr Justice Kessler	Delivered on: <b>30 January 2024</b>
<b>Neutral citation:</b> <i>S v Shipanga</i> CR 4/2024) [2024] NAHCNLD 13 (30 January 2024)	
<b>The order:</b> <ol style="list-style-type: none"><li>1. The conviction is confirmed.</li><li>2. The sentence is set aside and is substituted with a sentence of 3 (three) months' imprisonment wholly suspended for 3 years on condition that the accused is not convicted of Contempt of Court committed during the period of suspension.</li></ol>	
<b>Reasons for order:</b> SALIONGA J (concurring KESSLAU J)	
<p>[1] The accused herein was convicted in the Magistrate's court for the district of Ondangwa for Contempt of court and was sentenced to 3 months imprisonment. The matter came before the High Court on special review. It appears that the conviction came about after the accused, who appeared for a first appearance, disrupted court proceedings by scuffling and wrestling with the police officers in trying to get to the</p>	

prosecutor. A detailed statement in terms of s 108 (2) of the Magistrate Court Act 32 of 1944 by the magistrate who dealt with the matter is also attached.

[2] The Magistrate in a covering letter attached to the record of proceedings clearly sets out reasons for conviction and sentencing the accused for contempt of court in *facie curiae*.

[3] From the Magistrate's explanation it transpired that the accused in this matter wanted to plea guilty. However the prosecutor of C court was booked off. Ms Shigwedha, an A Court prosecutor, was unable to take a plea because she was only assisting with the postponements in C court. The matter was postponed and the state objected to bail. It is against this background that accused refused to understand why his case could not be finalised. Accused misbehaved in court and professed his intention to plead guilty throughout the proceedings until he was eventually convicted. His actions is not justified and rightly so he was convicted. It is the severity of the sentence imposed this court is concerned with.

[4] Lack of time was stated as a reason why the plea could not be taken. However much of the court's time was spent on the explanation of his right to apply for bail whilst that was irrelevant in light of the fact that accused wanted to plea guilty to the charge. Equally extensive time was spent on the contempt of court proceedings. Both the State and the Magistrate could have at least dealt with the situation differently e.g. letting the case to stand down for plea at a later stage that day or even the next day or arranging for another prosecutor to take a plea.

[5] In light of the fact that the accused was severely frustrated by the behaviour from both the State and the Magistrate in refusing to take a plea on a simple charge, in our view a suspended sentence will be appropriate in the circumstance.

[6] It follows that:

1. The conviction is confirmed.
2. The sentence is set aside and is substituted with a sentence of 3 (three) months' imprisonment wholly suspended for 3 years on condition the accused is not convicted of Contempt of Court committed during the period of suspension.

<b>J T SALIONGA</b> <b>JUDGE</b>	<b>E E KESSLAU</b> <b>JUDGE</b>