

**CASE NO.: CR 119/06**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

versus

**PETRUS HAUFIKU**

**(HIGH COURT REVIEW CASE NO.: 1545/05)**

**CORAM: VAN NIEKERK, J et PARKER, J**

Delivered on: 2006-12-19

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**REVIEW JUDGMENT:**

**PARKER, J:**

[1] The accused pleaded guilty to the offence of escaping from lawful custody. He was convicted and sentenced to one year imprisonment wholly suspended for a period of four years on condition that “*the accused is not convicted of escape from lawful custody within the period of suspension.*” It is the formulation of the condition that prompted this Court to put the following question to the learned magistrate: “The sentence omits

the word '*committed*'. Doesn't the word "*committed*" play a vital significance in the conditions of suspension?"

[2] The learned magistrate agreed that it was vitally significant for the word '*committed*' to be part of the condition. He, therefore, urged this Court to correct the sentence appropriately.

[3] The learned magistrate was also asked if he informed the accused of his right respecting mitigation. He responded that he did, even though this is not in the record that was forwarded to the Court. I have no reason to doubt the truthfulness of the learned magistrate's response because the accused's mitigation is on record. The learned magistrate was also asked if the accused's right to appeal was explained to him. The learned magistrate responded that he did through Annexure "C", which is usually used to explain both review and appeal rights. Having gone through the record, I am satisfied that these irregularities are not so serious as to result in a failure of justice.

[4] That being the case, the following orders are made:

- (1) The conviction and sentence are confirmed.
- (2) The condition of suspension is deleted and the following condition is substituted therefor:

One year imprisonment suspended for a period of four years on

condition that the accused is not convicted of the offence of escaping from lawful custody, committed during the period of suspension.

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**PARKER, J**

I agree

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**VAN NIEKERK, J**