CASE NO.: CR 149/2007

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

vs

WILLEM SOMSEB

(HIGH COURT REVIEW CASE NO.: 517/2006)

CORAM: VAN NIEKERK, J *et* SILUNGWE, AJ

DELIVERED: 2007.10.05

REVIEW JUDGMENT

SILUNGWE, AJ

[1] The accused, in this automatic review matter, was tried in the Grootfontein Magistrate's Court, on one count of hunting specially protected game, (namely: a giraffe, valued at N$9000-00) in contravention of section 26(1) of Ordinance 40 of 1975. He was convicted as charged and sentenced to five years direct imprisonment.

[2] When the learned presiding Magistrate was queried about the severity of the sentence passed on a thirty-year old first offender, a married labourer with ten children, most of whom being minors. The

sentencer has now responded in these terms:

> *"The sentence in hindsight does indeed seem too heavy considering the personal circumstances involved. It is therefore suggested that half of the sentence should have been suspended for three (3) years.*
>
> *The reason for the imposition of a direct custodial sentence was that the giraffe is no ordinary type of game but specially protected under the Ordinance and therefore attracts a hefty penalty clause i.e. N$200 000-00 or 20 years imprisonment. Accused was unable to pay a fine and therefore it would have been unreasonable to impose a fine coupled with a fine. Other aggravating factors include that the accused was employed by the complainant and the manner in which the animal was slaughtered."*

[3] In the circumstances, I agree that part of the sentence be suspended, but only to the extent as indicated below, given the aggravating factor already referred to by the sentencer.

[4] It is ordered as follows:

1. the sentence of five years' imprisonment is confirmed, but two years thereof are suspended for three years on condition that the accused is not convicted of a crime in contravention of

section 26(1) of Ordinance 40 of 1975, committed during the period of suspension;

2. the accused will, therefore, serve an effective prison term of three years, with effect from February 07, 2006, when he was initially sentenced.

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SILUNGWE, AJ

I agree

_____

VAN NIEKERK, J