

CASE NO.: CR 41/07

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

AMBROSIUS ORTMAN

(HIGH COURT REVIEW CASE NO.: 276/07)

CORAM: PARKER, J. et SILUNGWE, AJ.

Delivered on: 2007 March 01

**REVIEW JUDGMENT:
PARKER, J:**

[1] The accused pleaded not guilty to the offences of assault with intent to do grievous bodily harm (Count 1) and assault through threatening (Count 2). The accused was tried and found guilty on both counts as charged. I have perused the record and I am satisfied that the proceedings are in accordance with justice.

[2] I am, however, not satisfied with the wording of the learned magistrate's sentence. The learned magistrate sentenced the accused person to 12 months' imprisonment, six

months of which were suspended for five years on condition “accused does not within that period be convicted of assault or violence on the person of another.”

[3] The sentence is in order, but the formulation of the condition is wrong because the suspension is subjected to the condition that both the commission of the offence and the accused’s conviction should be within the suspended period of five years. A condition of suspension should not be formulated in such a way as to include both the commission of the offence and the conviction of the accused in the period of suspension because, for all manner of reasons, it can happen that the conviction only follows after the period of suspension has expired. If that happens, the suspended fine or imprisonment cannot be put into operation because the accused has not been convicted within the period of suspension.

[4] In the result, the following orders are made:

(1) The conviction and sentence are confirmed.

(2) The condition of suspension is deleted and the following condition is put in its place:

Twelve months’ imprisonment, six months of which are suspended for five years on condition that the accused is not found guilty of assault or any other form of violent act against another person, committed during the period of suspension.

PARKER, J.

I agree

SILUNGWE, AJ.