

CASE NO.: CR

127/2007

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

JULIUS KASHEETA MOONGO

[HIGH COURT REVIEW CASE NO.: 1158/07]

CORAM: MAINGA, J. *et* PARKER, J.

Delivered on: 2007 August 15

REVIEW JUDGMENT

PARKER, J.:

[1] The accused was charged before the Oshakati magistrate's Court with theft of a dog, valued at N\$400.00. He pleaded guilty, and was convicted on his plea of guilty and sentenced as follows:-

“12 months imprisonment suspend 6 months thereof for five years on condition you are not convicted of theft, fraud or robbery within the next five years.”

[2] I have perused the record, and I am satisfied that the proceedings are in accordance with justice. However, the sentence is wrong and confusing in its formulation in as much as it omits the words “committed”.

[3] The purpose of the suspension is to discourage the accused from committing a similar offence during the period of suspension. If the accused commits a similar offence within the period of suspension, the suspended sentence may be brought into operation even though the accused is only convicted of such an offence after the period of suspension. The way the condition attached to the suspended sentence is framed cannot be possible. 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 the sentence are confirmed, but the conditions of suspension is amended to read:

Twelve months’ imprisonment; six months of which is suspended for five years on condition that the accused is not convicted of theft, committed during the period of suspension.

PARKER, J.

I agree.

MAINGA, J.