

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

PAULUS SOMAEB

ACCUSED 1

ISAK KHAMUXAB

ACCUSED 2

(HIGH COURT REVIEW CASE NO.: 384/08)

CORAM: MULLER, J *et* SILUNGWE,AJ

Delivered on: 21 April 2008

REVIEW JUDGMENT

MULLER, J.:

[1] Both accused were convicted of the offence of housebreaking with intent to steal and theft. Each was sentenced to 4 years imprisonment, of which one year was conditionally suspended.

[2] In respect of sentence I queried the magistrate whether the sentence imposed in respect of each of the accused persons was not too severe in the circumstances.

In his response the magistrate denied that the sentences were severe and stated that in his opinion they were appropriate having regard to the circumstances of the case.

[3] In the annexure to the charge of housebreaking with intent to steal and theft, the value of the stolen items was recorded as being approximately N\$2684.10. In response to my query the magistrate mentioned that this is a substantial amount and further remarked that because most of the items in the complainant's Shebeen were stolen, she had to endure the hardship of restarting her business. I do not agree that this case warrants such a severe sentence. The magistrate court's penal jurisdiction is limited to 5 years and yet the magistrate saw it fit to impose nearly the maximum sentence. I do not agree with the trial magistrate's approach to penal sanctions in the matter.

[4] Having considered all the mitigating circumstances, as well as the aggravating fact that a major part of the content of the shebeen was apparently stolen, the sentences imposed by the magistrate in respect of the two accused are in my view not in accordance with justice and are shockingly inappropriate. I have considered the relevant circumstances and decided to impose sentences that would be appropriate in the circumstances. Being first offenders, I believe that they are entitled to suspension of a part of their sentences.

[5] In the result the following orders are made:

- a) the convictions of both accused are confirmed;

- b) the sentences of both accused are set aside and are substituted with the following sentences;

“Each of the two accused is sentenced to 2 years imprisonment of which (6) months are conditionally suspended for a period of 5 years on condition that each accused is not convicted of the offences of housebreaking with intent to steal and theft and the offence of theft, committed within the period of suspension.”

- c) The sentences are antedated to 12th February 2008, when the initial sentences were passed.

MULLER, J

I agree

SILUNGWE, AJ