

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**IIPINGE MITILI LISIAS**

**Accused**

**HIGH COURT REVIEW CASE NO. 595/08**

**CORAM: MAINGA, J. et ANGULA, A.J.**

Delivered on: 2008.05.22

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**REVIEW JUDGMENT:**

**ANGULA, A.J.:**

[1] This is a review matter.

[2] The accused pleaded guilty in the Magistrates Court of Oshakati to a charge of theft of one pair of ladies sandals valued at N\$49.95. He was sentenced to a term of imprisonment of 5 years. The Magistrate ordered that it shall run concurrently with the sentence of imprisonment the accused was serving at the time he was sentenced in this matter.

[3] The conviction is in order, however in my view the sentence of 5 years for what basically constituted shoplifting is shockingly inappropriate and it induces a sense of shock. Despite the fact that the accused had previous conviction of theft, I still think that the sentence of 5 years is disproportionate

to the offence committed. Factors which should have an effect on the sentence had they been properly considered by the learned Magistrate were, inter alia, the value of the goods and the fact that the goods were recovered resulting in the owner not having suffered any loss. Even though the sentence of 5 years imposed was within the Magistrate's jurisdiction, I gain the impression that the Magistrate imposed the 5 years sentence simply because the accused was already serving another 5 years sentence since his order that the two sentences should run concurrently.

[4] I am also of the view that the Magistrate misdirected himself in not considering to impose an alternative sentence such as a fine or custodial sentence, a portion whereof is suspended. For these reasons this court is at large to interfere with the sentence imposed.

[5] As a result the conviction is confirmed, the sentence is set aside and is substituted with the following sentence:

Three months' imprisonment to run concurrently with the sentence of five years imposed on 11 May 2006 which the accused is currently serving.

This sentence is ante-dated to 18<sup>th</sup> February 2008.

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**ANGULA A.J.**

I concur.

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**MAINGA, J.**