



CASE NO.: CR 11/2009

**IN THE HIGH COURT OF NAMIBIA
HELD IN OSHAKATI**

In the matter between

THE STATE

and

MARTHA NTAAGONA

(High court review no: 83/2009)

CORAM: LIEBENBERG, AJ et SHIVUTE, AJ

Delivered on: 02 April 2009

REVIEW JUDGMENT:

SHIVUTE, AJ.: [1] The accused appeared before Ondangwa Magistrate's Court and pleaded guilty to a charge of assault with intent to do grievous bodily harm. She was sentenced as follows:

“N\$1000.00 (one thousand N\$ fine) or 12 (twelve) months imprisonment of which N\$400.00 or 6 (six) months is suspected for 5 (five) years on condition that the accused is not convicted of any offence of which violence on a person is an element, committed the period of suspension”.

[2] I did not find it necessary to raise a query with the magistrate.

[3] In formulating the sentence. The magistrate states, “6 (six) months is suspected for 5 (five) years...” This does not make sense at all. Had the magistrate proof read the record she was going to pick it up. It is very important for the magistrate to proof read the record before it is send for review. Again in formulating the condition of the suspension of the sentence, the magistrate omitted to state that the prohibited conduct should not be committed “*during*” the period of suspension. It is trite law that the condition of the suspension of the sentence should provide that the prohibited conduct should not be committed during the period of suspension.

[4] Thus the sentence imposed cannot be allowed to stand.

[5] In the result, the following order is made:

- a. The conviction is confirmed.
- b. The sentence is amended to read:

N\$1000.00 or 12 months imprisonment, of which N\$400.00 or 6 months is suspended for 5 (five) years on condition that the accused is not convicted of any offence of which violence on a person is an element, committed during the period of suspension.

SHIVUTE, AJ

I Concur

LIEBENBERG, AJ