



**CASE NO.: CR**

**65/2010**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

**versus**

**GLADININE VAN WYK**

**[HIGH COURT REVIEW CASE NO.: 741/2010]**

**CORAM: PARKER, J et SIBOLEKA, J**

**Delivered on: 2010 OCTOBER 6**

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**REVIEW JUDGMENT**

**SIBOLEKA, J.:**

[1] The accused appeared before the District Magistrate Court Windhoek on two counts of fraud. He pleaded guilty to both Courts. After questioning the accused in terms of section 112(1)(b) of Act 51/77, the learned magistrate convicted the accused. The convictions

are in order and will not be tempered with.

On the first count the accused was sentenced as follows:

“Sentence:

Count 1: N\$8,000.00 (Eight Thousand Five Hundred Namibian Dollar) of which N\$3,000.00 (Three Thousand Namibian Dollar) is suspended for a period of 3 (Three) years on condition accused is not convicted of theft, committed during the period of suspension.

OR

1 (One) Year Imprisonment of which 6 (Six) months suspended for a period of 3 (Three) years on condition accused is not convicted of Theft, committed during the period of suspension.”

[2] The above sentence is unclear and confusing. It cannot be allowed to stand.

[3] It has been stated in several cases that the conditions of a suspended sentence should be clear so that the accused can understand them. After all, the very purpose of a suspended sentence is to regulate the future conduct of the accused. (See *S v Pedro Pay and 6 Others*, Case No. 153/2007 unreported and *S v Sadie Mouton* Case No. CR 161/2007 unreported.)

[4] In the circumstances, the conviction is confirmed and the sentence imposed by the Magistrate on count 1 is set aside and is substituted with the following:

A fine of N\$8,000.00 or 12 months' imprisonment of which N\$3,000.00 or 6 months are suspended for 3 years on condition that the accused is not found guilty of fraud, committed during the period of suspension.

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**SIBOLEKA, J**

I agree.

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**PARKER, J**