

REPUBLIC OF NAMIBIA

CASE NO.: CR 42/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

STATE

versus

THOBIA THOMAS & 2 OTHERS

(HIGH COURT REVIEW CASE NO.: 1392/10)

CORAM: VAN NIEKERK, J et NDAUENDAPO, J

Delivered on: 23 September 2010

REVIEW JUDGMENT

VAN NIEKERK, J [1] The Magistrate, Swakopmund convicted the three accused of theft on 27 October 2010 and gave them a partly suspended sentence. The conviction is in order, but the sentence needs to be reformulated. Its current wording conveys a meaning which may lead to unnecessary and unintended difficulties if there should be an application to put the sentence into operation. The three accused were sentenced as follows:

"3 (three) years imprisonment of which 1 (one) year and 6 (six) months are

suspended for 5 (five) years on condition each accused is not again convicted of theft committed during the period of suspension and in respect of which each accused is sentenced to imprisonment without the option of a fine."

[2] By using the word "each" as it is done here, it would mean that the sentence cannot be put into operation in respect of a single accused without having regard to what the behaviour of the other two accused was during the suspension period and whether they were each sentenced to imprisonment without the option of a fine. This would also mean that each accused's future would be in the hands of his co-accused, as his sentence would only be suspended if "each" of the accused is not convicted of theft during the suspension period. This would be contrary to one of the main purposes of a suspended sentence, which is to encourage an accused to refrain from criminal conduct.

[3] In the result the following order is made:

1. The convictions are confirmed.
2. The sentence imposed is substituted with the following sentence:

"Each accused is sentenced to 3 (three) years imprisonment of which 18 (eighteen) months are suspended for 5 (five) years on condition that the accused is not convicted of theft committed during the period of suspension and in respect of which the accused is sentenced to imprisonment without the option of a fine".

VAN NIEKERK, J

I concur.

NDAUENDAPO, J