

CASE NO.: CR

41/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

NICANOR FILLIPUS

[HIGH COURT REVIEW CASE NO.: 696/2010]

CORAM: NDAUENDAPO, J et SIBOLEKA, J

Delivered on: 2010 SEPTEMBER 24

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The 27 year old accused appeared in the District Magistrate Court at Swakopmund on a charge of assault with intent to do grievous bodily harm. He pleaded guilt and after questioning in terms of section 112(1)(b) of Act 51/77, he was sentenced as follows:

“Sentence: Fine

Fine Amount: N\$3,000,00 (Three Thousand Namibian Dollars) of which N\$1,500,00 (One Thousand Five Hundred Namibian Dollars) is suspended for a period of 5 (Five) years on the following conditions:

1. On the condition that the accused is not convicted of assault

with the intent to do grievous bodily harm, committed during the period of suspension

Or

Sentence: Imprisonment

Term: 12 (Twelve) Months imprisonment of which 6 (Six) Months is suspended for a period of 5 (Five) Years on the following conditions:

1. On the condition that the accused is not convicted of assault with the intent to do grievous bodily harm, committed during the period of suspension."

[2] It is this Court's considered view that the conviction is in accordance with justice and will be confirmed. However, the way the sentence has been formulated, is not according to law and cannot be allowed to stand. Because of the delay that may result, I did not find it appropriate to request reasons from the Magistrate.

[3] In the result the Court makes the following order:
The conviction is confirmed.
The sentence is altered to read as follows:

N\$3.000,00 (three thousand Namibian Dollars) or 12 (twelve) months imprisonment of which N\$1.500,00 (one thousand five hundred Namibian Dollars) or 6 (six) months are suspended for 5 (five) years on condition that the accused is not found guilty of assault or assault with intent to do grievous bodily harm, committed during the period of suspension.

[4] The sentence is antedated to 05 March 2010.

SIBOLEKA, J

I agree.

NDAUENDAPO, J