

**CASE NO.: CR 51/2010**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

**versus**

**GIVEN GAMGAESEB**

**[HIGH COURT REVIEW CASE NO.: 916/2010]**

**CORAM: NDAUENDAPO, J et SIBOLEKA, J**

**Delivered on: 2010 SEPTEMBER 24**

**REVIEW JUDGMENT**

**SIBOLEKA, J.:**

[1] A 21 year old accused was convicted in the District Magistrate Court at Otavi for hunting a kudu valued at N\$600,00 without a permit or authorization and was sentenced to: N\$ 1200,00 or 6 months imprisonment.

[2] When the matter came before my brother Hinda, AJ, the following query was directed to the Magistrate:

"The Reviewing Judge remarks as follows:

The learned magistrate is requested to give his reasons for sentencing the accused to a fine of N\$1200 in default of payment 6 months imprisonment.

Taking into consideration the Nature Conservation Ordinance 4 of 1975

"Section 87 General penalty

Any person who is convicted of an offence in terms of this Ordinance for which no penalty is expressly provided shall be liable on conviction- (My emphasis)

(a) To a fine not exceeding two hundred and fifty rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment if such person has not previously been convicted of such offence or, in the opinion of the court, a similar offence in terms of the provisions of a repealed ordinance or the law of any province of the Republic of South Africa;

(b) To a fine exceeding fine hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment. If such person has previously been convicted of an offence referred to in paragraph (a)."

[3] The Magistrate's reply has been received and it reads:

Re: Reply by Magistrate on query by reviewing Judge in S v Given Gamgaeseb 07/2010

Primarily would I like to indicate that the reason for sentence in the abovementioned case is outlined in the original and typed record (see page 2 of the typed record). However, in amplification of the said reasons did I also took into cognizance the fact that the value of the said kudu being hunted and killed by the accused was N\$600,00. Furthermore was the accused also employed at the very same farm where he killed the said kudu.

Secondly, the honourable reviewing judge made reference to the penalty provision under section 87 of The Nature Conservation Ordinance 4 of 1975. However, I would like to point out that I took into account the fact that this is a hunting of huntable game without the permission of the lawful owner of the farm (Section 30(1) of the Ordinance) for which the accused was convicted of. I as such relied upon the express penalty provision under section 30 (l)(c) Ordinance 4/1975 as amended by section 11(c) Nature Conservation Amendment Act 27/ 1986.

Section 11 (c) reads as follows: "*any person who contravenes or fails to comply with any provision of this subsection or any condition, requirement or*

*restriction of any written authority granted in terms of this subsection, shall be guilty of an offence and liable on conviction to **[not less than five hundred rand and]** nor exceeding **[seven hundred and fifty rand]** R2000 or to imprisonment for a period **[not less than five hundred rand and]** two years, or to both such fine and such imprisonment".*

As such am I as the concerned magistrate of the view that the said sentence of N\$ 1200,00 in default of payment 6 months imprisonment fall within the boundaries of the express penalty provision applicable to the offence for which the accused had been convicted of.

However, if the honourable reviewing judge views the said sentence as incorrect and inappropriate in view of the circumstances would I as the concerned Magistrate, with all respect stand to be guided and advised accordingly in this regard."

[4] After carefully looking at the Magistrate's reply, this Court is of the view that the imposed sentence is in accordance with justice as it falls within the ambit of section 11(c) of the Nature Conservation Amendment Act, Act no. 27 of 1986.

[5] In the result:

(a) The conviction and sentence are confirmed.

**SIBOLEKA, J**

I agree

**NDAUENDAPO, J**