



**CASE NO.: CR 73/2011**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**RUTH OXURUS**

**(HIGH COURT REVIEW CASE NO.: 151/2010)**

**(MAGISTRATE'S SERIAL NO.: 95/2009)**

**CORAM: PARKER, J et SHIVUTE, J**

Delivered on: 2011 August 23

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**REVIEW JUDGMENT**

**SHIVUTE, J:** [1] The accused person appeared in the Magistrate's Court Outjo. He was convicted of the offence of dealing in prohibited dependence producing drugs contravening Section 2 (a) read with Sections

1, 2 (i), or 2 (ii), 8, 10, 14 of Act 41 of 1971 as amended. He was sentenced as follows:

*“Three thousand Namibian dollars (N\$3000.00) or in default of payment, twenty four months imprisonment, of which one thousand five hundred (N\$1500.00) or 12 months are suspended for five (5) years on condition that you are not convicted of contravening Section 2 (a) and or 2 (b) of Act 41 of 1971 in the period of suspension.*

[2] I have no problem with the conviction. However, the problem lies with the formulation of the sentence.

[3] The following query was directed to the learned magistrate.

1. The accused was convicted of the offence of Dealing in prohibited dependence producing drugs which is a statutory offence. Why is the provisions of the Act contravened not indicated on the (J14) review sheet?

2. Does the formulation of the condition of suspension meet all the requirements given the fact that the word “committed” has been omitted from the suspended sentence?

[4] The trial magistrate responded in the following terms:

*“I am in full agreement with the honourable judge. That the contravened section and the Act is not indicated on the (J4) review sheet. That the word “committed” has been omitted from the suspended sentence. That this was caused by a typing error as the contravened section and Act is fully indicated on the charge sheet. The honourable judge may please insert the word committed in the suspended sentence. I will see to it that any of the above does not happen in the future again.”*

[5] If the accused is charged or convicted with a statutory offence the statutory provisions should be indicated on the charge as well as on the review sheet.

[6] In formulating the sentence the word "committed" has been omitted from the suspended sentence. The conditions of suspension must be clear and specific as the accused must understand them and know how to behave himself in compliance thereof.

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

- (1) The conviction is confirmed.
- (2) The sentence is altered to read as follows:

Three thousand Namibian dollars (N\$3000.00) fine or in default of payment, twenty four (24) months' imprisonment, of which one thousand five hundred (N\$1500.00) or twelve (12) months are suspended for five(5) years on condition that the accused is not convicted of contravening Section 2 (a) or 2 (b) of Act 41 of 1971 committed during the period of suspension.

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SHIVUTE, J

I agree

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PARKER, J