



CASE NO.: CR

90/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

ATTIE MUVANGUA & PAULUS SHISHIVENI

[HIGH COURT REVIEW CASE NO.: 1858/2011]

CORAM: PARKER, J et SIBOLEKA, J

Delivered on: 2011 SEPTEMBER 30

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The two accused appeared before the Magistrate's Court at Okahandja on a charge of theft.

[2] They were questioned in terms of section 112(1)(b) contrary to

the request by the Prosecutor that the matter be disposed in terms of section 112(1)(a) of the Criminal Procedure Act, Act 51/77. I have no good reason to fault the learned Magistrate's conduct. I must just mention here that the questioning in terms of section 112(1)(b) must be done in respect of each accused separately, and that such questions and answers must be so recorded up to the end, then comes the other accused, until they have all been accorded the opportunity to tell the Court what happened. This is the proper cause the learned Magistrate should have adopted here. Despite this shortcoming I am satisfied that the two accused had indeed intended to plead guilty, and were thus correctly convicted.

[3] However, after the conviction the learned Magistrate imposed the following sentence:

“Each: N\$1,000.00 (one thousand Namibian dollars) of which N\$500.00 (five hundred dollars) is suspended for a period of two (2) years on conditions accused is not convicted of theft or attempted theft committed during the period of suspension

Or

Six (6) months imprisonment of which three (3) months is suspended for a period of two (2) years on condition that the accused is not convicted of theft or attempted committed during the period of suspension.”

[4] It has been stated in numerous review matters by this Court that a suspended sentence must be clearly framed to enable the accused to

understand what he is not supposed to do in future. The manner in which the above sentence has been written is confusing and cannot be allowed to stand.

[5] In the result I make the following order:

The conviction is confirmed;

The sentence imposed by the learned Magistrate is set aside and substituted with the following:

Each: N\$1,000.00 (one thousand Namibian Dollars) or six (6) months imprisonment of which N\$500.00 or three (3) months are suspended for two years on condition that the accused is not convicted of theft, committed during the period of suspension.

SIBOLEKA, J

I agree.

PARKER, J

