



**CASE NO.: CR 27/2011**

**IN THE HIGH COURT OF NAMIBIA  
HELD AT OSHAKATI**

In the matters between:

**(1) THE STATE**

and

**TANGENI VANEZZA KAUZUU**

*(HIGH COURT REVIEW CASE NO.: 178/2011)*

**(2) THE STATE**

and

**PAULUS HANGALO**

*(HIGH COURT REVIEW CASE NO.: 185/2011)*

**CORAM:** LIEBENBERG, J. *et* TOMMASI, J.

Delivered on: 26 September 2011

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**REVIEW JUDGMENT**

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**LIEBENBERG, J.:** [1] The above captured cases were sent on review in terms of section 302 (1)(a) of the Criminal Procedure Act<sup>1</sup> but neither of the sentences imposed are reviewable. In respect of both cases wholly suspended sentences of fines were imposed and the only reason why this Court has to intervene is because the conditions of suspension are improper.

[2] The conditions of suspension in both cases read that the accused “... *does not commit similar offence during period of suspension.*” (sic) The sentences are defective in two respects namely, (i) the prohibited conduct is too vague; and (ii) the commission of the prohibited offence must be accompanied by a *conviction*.

[3] The primary object of a suspended sentence is that the accused must understand what he or she must do or avoid; thereby ensuring that the suspended sentence is not put into operation. Secondly, it is equally important that the court later considering the possible putting into operation of the suspended sentence must be able of determining the ambit of the condition in order to decide whether or not it has been complied with or infringed. In these cases the accused, being unsophisticated lay persons, would not fully comprehend which offences may be considered to be “similar” to the offences of assault and theft for which they were convicted, respectively. In a large number of cases it has been decided that the offences mentioned in the condition of suspension must be “connected” to the offences

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<sup>1</sup> Act 51 of 1977

for which the sentence is imposed<sup>2</sup>. Thus, in both the present cases it would have been a valid condition to refer to the offences of assault and theft respectively, and not merely to “*similar offences*”.

[4] Before a suspended sentence may be put into operation it is required that the accused must have been convicted of the prohibited offence. It is therefore improper to set a condition that the accused must not *commit* the prohibited offence, as he should not be *convicted* of having committed same.

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

1. In both cases the convictions are confirmed.
2. In ***The State v Tangeni Vanezza Kauzuu*** the sentence is hereby set aside and substituted by the following sentence: N\$300 or 3 months imprisonment wholly suspended for 2 years on condition that the accused is not convicted of the offence of theft committed during the period of suspension. The sentence is antedated to 17.07.2011.
3. In ***The State v Paulus Hangalo*** the sentence is set aside and substituted by the following sentence: N\$400 or 2 months imprisonment wholly suspended for 1 year on condition that the accused is not convicted of the offence of assault committed during the period of suspension. The sentence is antedated 20.07.2011.

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<sup>2</sup>S v *Mjware*, 1990 (1) SACR 388 (N) at 389g

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**LIEBENBERG, J**

I concur.

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**TOMMASI, J**