



CASE NO.: CR 24/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

JOSIAS MUHAMUBI

[HIGH COURT REVIEW CASE NO.: 533/2011]

CORAM: SIBOLEKA, J et SIMPSON, AJ

Delivered on: 2011 MARCH 15

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The 28 year old accused appeared before the Magistrate's Court at Katutura on four charges of fraud.

[2] He was correctly questioned and convicted in terms of section 112(1)(b) of Act 51/77, and this conviction is in order.

[3] However, the sentences imposed by the learned Magistrate state as follows:

Charge 1: A fine of N\$1000.00 (one thousand Namibia dollars) or 12 months (twelve months) imprisonment;

Charge 2: 6 months (six months) imprisonment wholly suspended for a period of 5 years on condition accused is not again convicted of a crime of dishonesty committed during the period of suspension;

Charge 3: A fine of N\$1000.00 (one thousand Namibia dollars) or 12 months (twelve months) imprisonment;

Charge 4: 6 months (six months) imprisonment wholly suspended for a period of 5 years on condition that accused is not again convicted of a crime involving dishonesty committed during the period of suspension."

[4] Counts 2 and 4 are separate wholly suspended sentences for a period of five years each. It is not clear whether a contravention of the conditions of suspension in these two counts will only take place within five or ten years.

[5] It is my considered view that the condition of suspension must be clear and this includes the duration of such a suspension. For this reason the suspended sentences in counts 2 and 4 in this matter will be tempered with.

[6] In the result the sentences in count 2 and 4 are altered to read as follows:

Counts 2 and 4 are taken together for purposes of sentence. Accused is sentenced to twelve (12) months imprisonment wholly suspended for five years on condition that the accused is not found guilty of fraud or uttering committed during the period of suspension.

This sentence is antedated to 26 July 2010.

SIBOLEKA, J

I agree.

SIMPSON, AJ