

REPUBLIC OF NAMIBIA

CASE NO.: CR 25/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

STATE

versus

MICHAEL GAWASEB

BEN AUSEB

(HIGH COURT REVIEW CASE NO.: 1329/10)

CORAM: VAN NIEKERK, J et SIMPSON, AJ

Delivered on: 22 March 2011

REVIEW JUDGMENT

VAN NIEKERK, J [1] The two accused were convicted in the Gobabis magistrate's court on a charge of contravening section 51 of the Nature Conservation Ordinance, 1975 (Ord. 4 of 1975), as amended, in that they were unlawfully in possession of game meat.

[2] Accused no. 1, who has three previous convictions dated 19 July 2006 for various offences under Ord. 4 of 1975, was sentenced to 3 months imprisonment. In

addition he was sentenced to a fine of N\$250 or 3 months imprisonment which was wholly suspended for 5 years on the usual condition of good behaviour. The second accused, who is a first offender, was sentenced to 3 months imprisonment wholly suspended for 5 years on the abovementioned condition. In addition thereto he was sentenced to N\$250 or 3 months imprisonment.

[3] The head of the magistrate's office Gobabis sent this matter on review as she was of the view that the sentencing magistrate acted beyond his jurisdiction where he sentenced the accused. The Reviewing Judge requested the sentencing magistrate to respond to the following query:

"Does the sentence of both accused not fall foul of the provisions of section 278(1) of the Criminal Procedure Act, 51 of 1977?"

[4] Section 287(1) reads as follows:

"(1) Whenever a court convicts a person of any offence punishable by a fine (whether with or without any other direct or alternative punishment), it may, in imposing a fine upon such person, impose, as a punishment alternative to such fine, a sentence of imprisonment of any period within the limits of its jurisdiction: Provided that, subject to the provisions of subsection (3), the period of such alternative sentence of imprisonment shall not, either alone or together with any period of imprisonment imposed as a direct punishment, exceed the longest period of imprisonment prescribed by any law as a punishment (whether direct or alternative) for such offence".

[5] The maximum sentence which may be imposed for a contravention of Section 51 of Ord. 4 of 1975 is determined by the general penalty provision in Section 87(a) of the Ordinance, which states that a first offender in respect of the particular offence is liable to a fine not exceeding N\$250 or imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[6] The clear implication of Section 287(1) of Act 51 of 1977, read with Section 87(a) of Ord. 4 of 1975, is that the total period of imprisonment in this case may not exceed 3 months. The magistrate concedes that he passed incompetent sentences in this case, as the total period of imprisonment imposed on each accused is 6 months. His proposal regarding the new sentences to be imposed is sensible and shall be followed.

[7] The result is as follows:

1. The convictions are confirmed.

2. The sentences are set aside and substituted with the following sentences:

2.1. Accused no 1: 65 (sixty-five) days imprisonment. In addition thereto the accused is sentenced to a fine of N\$250 (two hundred and fifty Namibia Dollars) or 25 (twenty-five) days imprisonment which is wholly suspended for 5 (five) years on condition that the accused not convicted of a contravention of Section 51 of the Nature Conservation Ordinance, 1975 (Ordinance 4 of 1975), committed within the period of suspension.

2.2. Accused no 2: N\$250 (two hundred and fifty Namibia Dollars) or 25 (twenty five days imprisonment. In addition thereto 65 (sixty-five) days imprisonment which is wholly suspended for 5 (five) years on condition the accused is not convicted of a contravention of section 51 of the Nature Conservation Ordinance, 1975 (Ordinance 4 of 1975), committed within the period of suspension.

2.3. The sentences are backdated to 14 July 2010.

VAN NIEKERK, J

I concur.

SIMPSON, AJ