



REPUBLIC OF NAMIBIA

CASE NO.: CR 28/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

STATE

versus

EKANDJO SEUN

(HIGH COURT REVIEW CASE NO.: 2072/09)

CORAM: VAN NIEKERK, J et SIMPSON, AJ

Delivered on: 30 March 2011

REVIEW JUDGMENT

VAN NIEKERK, J [1] The accused was convicted in the Magistrate's Court sitting at Katutura on a charge of theft of a blank cheque and a charge of forgery in that the accused affixed an unauthorised signature to the cheque, after he made it payable to bearer in the amount of N\$1500.

[2] The magistrate took the counts together for sentence as they were closely related and sentenced the accused as follows:

“12 (twelve) months direct imprisonment, 6 months is suspended for 5 years on condition accused is not convicted of theft or forgery committed during the period of suspension to which the accused is sentenced to imprisonment without the option of a fine.”

[3] When the matter was submitted on automatic review, Tommasi, J sought clarification from the trial magistrate on whether he intended to suspend 6 months of the 12 months imprisonment imposed, or whether his intention was to impose 12 months imprisonment plus an additional 6 months imprisonment suspended on the said condition.

[4] The magistrate has responded, explaining that his intention was the first of the abovementioned two alternatives. He asks that the sentence be worded more clearly. I agree that this should be done.

[5] The result is that the two convictions are confirmed. The sentence is set aside and substituted with the following:

“The two counts are taken together for sentence. The accused is sentenced to 12 (twelve) months imprisonment of which 6 (six) months imprisonment is suspended for 5 (five) years on condition that the accused is not convicted of theft or forgery committed within the period of suspension and for which imprisonment without the option of a fine is imposed.”

The sentence is backdated to 26 November 2009.

VAN NIEKERK, J

I concur.

SIMPSON, AJ