



**CASE NO.: CR 30/2012**

*“Not Reportable”*

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

**VS**

**HENDRICK GAMEB**

*(HIGH COURT REVIEW CASE NO.: 628/2012)*

**CORAM:**            **PARKER J et, SHIVUTE J**

Delivered on:        2012 April 17

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## **REVIEW JUDGMENT**

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**PARKER, J** [1] Before the Windhoek Magistrates Court, the accused pleaded guilty to the offence of contravening s. 2(b) of Act No. 41 of 1971. He was found guilty on his own plea and sentenced accordingly.

[2] The formulation of the condition is wrong because the suspension is subjected to the condition that both the commission of the offence and the accused's conviction should take place within the suspended period of five years. A condition of suspension should not be formulated in such a way as to include both the commission of the offence and the conviction of the accused in the period of suspension because, for all manner of reasons, it can happen that while the offence is committed during the period of suspension, conviction only follows after the period of suspension has expired. If that happens, the suspended imprisonment cannot be put into operation because the accused would not have been convicted within the period of suspension.

[3] In the result, I make the following order:

- (1) The conviction and sentence are confirmed.
- (2) The condition of suspension is deleted and the following condition is substituted therefor:

A fine of two thousand Namibia Dollars (N\$2, 000.00) or in default of payment 18 months' imprisonment which are wholly suspended for a period of five years on condition that the accused is not convicted of the offence of contravening s. 2(b), read with relevant provisions and Part I, of Act No. 41 of 1971, committed during the period of suspension.

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**PARKER, J**

*I agree.*

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**SHIVUTE, J**