



CASE NO.: CR 16/2012

NOT REPORTABLE

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

EEUBIU KEFAS

HIGH COURT REVIEW CASE NO.: 592/2011

CORAM: HOFF, J *et* SIBOLEKA, J

Delivered on: 29 February 2012

REVIEW JUDGMENT

HOFF, J: [1] The accused was convicted in the magistrate's court of the crime of malicious damage to property and sentenced as follows:

“Three (3) years imprisonment of which one (1) year is suspended for five (5) years on condition accused is not convicted of any offence of which violence is an element committed within the period of suspension.”

[2] The accused admitted damaging a Toyota Land Cruiser vehicle (valued between N\$40 000.00 and N\$80 000.00) belonging to the complainant by setting it alight.

[3] I directed the following query to the magistrate:

“The condition of the suspended sentence is that the accused is not convicted of any offence of which violence is an element.

Does it mean that the suspended sentence would be put into operation if the accused is for example convicted of murder or rape ?

Please explain the reason why such a wide condition was imposed ?”

[4] The reply I received was that the presiding magistrate is no longer employed by the Ministry of Justice and has left Namibia.

[5] It is trite law that the condition of suspension must not be so wide that it has no nexus with the offence committed.

See *S v Van den Bergh* 1976 (2) SA 232 (T); *S v Du Preez* 1975 (3) SA 187; *S v Nkozi* 2008 (1) SACR 87 (N).

[6] In *R v Cloete* 1950 (4) SA 191 (O) the Court held that two principles should be observed in the imposition of a condition. In the first instance, the condition imposed should bear at least some relationship to the circumstances of the crime which is being punished by the imposition of the suspended sentence and secondly, the condition must be stated with such precision that the convicted person may understand the ambit of the suspension.

[7] In addition to these two requirements it has also been held that a condition of suspension must be reasonable and not unduly onerous for the accused person to comply therewith.

[8] In *S v Valensia* 1973 (3) SA 934 (N) it was held that it is always a salutary rule to define specifically the offences which are included in the conditions of suspension.

[9] In my view to impose as a condition of suspension, as the magistrate did in this matter, that the accused is not to be convicted of an offence of which violence is an element is a too wide and onerous condition.

[10] In the result the following orders are made:

1. The conviction is confirmed.
2. The sentence is set aside and substituted with the following sentence:
Three (3) years imprisonment of which one (1) year imprisonment is suspended for a period of five (5) years on condition accused is not convicted of the crime of malicious damage to property committed during the period of suspension.

HOFF, J

I agree

SIBOLEKA, J