



**CASE NO.: CR 21/2012**

*"Not Reportable"*

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

**VS**

**SITALI SISEHO SITALI**

*(HIGH COURT REVIEW CASE NO.: 309/2012)*

**CORAM:**                    **PARKER J *et*, SIBOLEKA J**

Delivered on:            2012 March 20

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**REVIEW JUDGMENT**

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**PARKER, J** [1] Before the Katima Mulilo Magistrates Court, the accused pleaded guilty to the common law charge of escaping from lawful custody. 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 12 months. 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 the 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. Additionally, a sentence of a fine that merely says 'One thousand Namibia dollars (N\$1,000-00)', for example, is, with respect, meaningless. The phrase 'A fine of' should precede what is in reality a fine.

[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 one thousand Namibian dollars (N\$1 000-00) or in default of payment six (6) months' imprisonment, of which two hundred dollars (N\$200-00) or two months are suspended for a period of three (3) years on condition that the accused is not convicted of the common law offence of escaping from lawful custody, committed during the period of suspension.

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**PARKER, J**

***I agree.***

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**SIBOLEKA, J**