



HIGH COURT OF MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR44 /2013

In the matter between:

THE STATE

APPLICANT

And

NGUTUPA KAHUURE

RESPONDENT

(HIGH COURT MAIN DIVISION CASE NO 1282-2012)

Neutral citation: *The State v Kahuure (1282/2012) [2013] NAHCMD 211 (24 July 2013)*

Coram: NDAUENDAPO J et SIBOLEKA J

Delivered: 24 July 2013

ORDER

- (1) The conviction is confirmed
- (2) The sentence is substituted with the following:

Fined N\$800.00(Eight Hundred Namibian Dollars) or in default of payment 3 months imprisonment wholly suspended for a period of 3 years on condition that the accused is not convicted of theft or attempted theft committed during the period of suspension.

NDAUENDAPO J (SIBOLEKA J concurring):

[1] The accused, Ngutupa Kahuure, appeared in the magistrates' court of Swakopmund on a charge of theft.

He pleaded guilty and was convicted as charged and the matter was disposed of in terms of section 112 (1) (b) of act 51 of 1977. He was sentenced as follows:

'Fined N\$800.00 (eight hundred Namibian dollars) of which N\$800.00 (eight hundred Namibian dollars) is suspended for a period of 3 (three) years on the following condition:

1. That the accused is not convicted of theft or attempted theft, committed during the period of suspension.'

Or

3 (three) month's imprisonment of which 3 (three) months is suspended for a period of 3 (three) years on the following condition:

1. That the accused is not convicted of theft or attempted theft, committed during the period of suspension.

[2] The sentence is confusing, not in accordance with the law and cannot be allowed to stand.

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

(1) The conviction is confirmed

(2) The sentence is substituted with the following:

Fined N\$800.00(Eight Hundred Namibian Dollars) or in default of payment 3 months imprisonment wholly suspended for a period of 3 years on condition that the accused is not convicted of theft or attempted theft committed during the period of suspension.

GN NDAUENDAPO
JUDGE

AM SIBOLEKA
JUDGE