



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR: 43/2013

In the matter between:

THE STATE

and

MUKUVE MICHAEL MARUNGU

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 760/2013)

Neutral citation: *State v Marungu* (CR 43/2013) [2013] NAHCMD 230 (31 July 2013)

Coram: HOFF J and UNENGU AJ

Delivered: 31 July 2013

Summary: In terms of section 297(1)(b) of Act 51 of 1977 a sentence or part of a sentence may be suspended for a period not exceeding 5 years – This period of suspension must be recorded as it forms an integral part of any suspended sentence.

ORDER

12 months imprisonment wholly suspended for a period of 3 years on condition that the accused pays the complainant, Irma Haingura the amount of N\$2600 on or before 31 May 2013. Payments to be made to the clerk of the court.

JUDGMENT

HOFF J (UNENGU AJ concurring):

[1] The accused was convicted on a charge of theft and sentenced as follows:

'12 months imprisonment wholly suspended on condition that accused pays N\$2600.00 to the clerk of the court on behalf of Irma Haingura on or before 31 May 2013.'

[2] I directed a query to the magistrate requesting an explanation regarding the period of suspension.

[3] The magistrate replied that the operation of the sentence was suspended until 31 May 2013 in order for the accused to compensate the complainant. This however was not the aim of my query.

[4] Section 297(1) of the Criminal Procedure Act 51 of 1977 reads as follows:

'Where a court convicts a person of any offence, other than offence in respect of which any law prescribes a minimum sentence, the court may in its discretion –

- (a) postpone for a period not exceeding five years the passing of sentence and release the person concerned
- (i) no one or more conditions, whether as to (aa) – (hh)

(b) pass sentence but order the operation of the whole or any part thereof be suspended for a period not exceeding five years on any condition referred to in paragraph (a)(i) which the court may specify in the order.'

[5] The period of suspension is in the court's discretion but may not be longer than 5 years.

[6] This was the aim of my query since there is no period of suspension in the sentence imposed by the magistrate and the sentence imposed is defective to the extent that it does not comply with the provisions of s 297(1)(b).

[7] The sentence was further suspended on condition that the accused pays the amount mentioned to the clerk of the court. This is strictly speaking incorrect since the clerk of the court is not the complainant and suffered no loss. The accused should have been ordered to pay the amount to the complainant but the clerk of the court may be directed to receive the monies.

[8] In the result the sentence is amended to read as follows:

12 months imprisonment wholly suspended for a period of 3 years on condition that the accused pays the complainant, Irma Haingura the amount of N\$2600 on or before 31 May 2013. Payments to be made to the clerk of the court.

E P B HOFF
Judge

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E P UNENGU
Acting Judge