



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR: 52/2013

In the matter between:

THE STATE

and

KATHINDI TILONEN

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 639/2013)

Neutral citation: *State v Tilonen* (CR 52/2013) [2013] NAHCMD 242 (15 August 2013)

Coram: HOFF J and UNENGU AJ

Delivered: 15 August 2013

ORDER

The first condition of the sentence is amended to read:

The accused is sentenced to 4 (four) years imprisonment of which 2 (two) years are suspended for 5 years on the following conditions:

(a) that the accused is not convicted of the offence of fraud committed during the period of suspension.

JUDGMENT

HOFF J (UNENGU AJ concurring):

[1] The accused was convicted of the crime of fraud in the amount of N\$45 458.71 and sentenced as follows:

'4 (four) years imprisonment of which 2 (two) years is suspended for 5 years on the following condition;

(a) that accused is not convicted of any offence involving theft committed during the period of suspension.

(b) that the accused compensates the complainant Magdalena Jesaya of Erf 5594 Hans Dietrich Street, Donkerhoek, Windhoek, through the Clerk of the Court, Ondangwa the sum of N\$41 672.81 on or before 31 December 2003.'

[2] I directed a query to the magistrate which in part reads as follows:

'Could you please explain why there is no reference to the crime of fraud in the suspended sentence?'

[3] The magistrate in his reply readily admitted that reference to the crime of fraud should have been referred to in the formulation of the suspended sentence.

[4] The second condition of the suspended sentence which refers to compensation is in order.

[5] In the result the first condition of the sentence is amended to read;

The accused is sentenced to 4 (four) years imprisonment of which 2 (two) years are suspended for 5 years on the following conditions:

(a) that the accused is not convicted of the offence of fraud committed during the period of suspension.

E P B HOFF
Judge

E P UNENGU
Acting Judge

4
4
4
4
4