



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 63/2013

IN THE HIGH COURT OF NAMIBIA

In the matter between:

**THE STATE**

and

**STEVEN HAUFIKU**

**ACCUSED**

(HIGH COURT MAIN DIVISION REVIEW REF NO.: 562/2013)

*Neutral citation: S v Haufiku (CR 63/2013) [2013] NAHCMD 292 (17 October 2013)*

**CORAM: DAMASEB, JP et SMUTS, J**

Delivered on: 17 October 2013

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**ORDER**

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That the conviction is confirmed but not the sentence.

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## JUDGMENT

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**SMUTS, J.:** [1] This matter has come before me by way of automatic review. The accused was charged with the common law crime of robbery. The particulars of the charge were that on or about 12 September 2013 at or near Okahandja the accused unlawfully, and with intention of forcing him into submission, assaulted Patrick Makanga by kicking him down to the ground and all over the body and unlawfully, with the intent to steal from him items to the value of N\$1 010 including his identity card, ATM card, t-shirts, leather jacket, tracksuit pants, sandals and a black Arsenal bag and toiletries which were in his possession or of Ms Anna Swartboo who accompanied him.

[2] The accused on 18 September 2013 pleaded guilty to the charge. In the course of questioning by the magistrate under s 112(1)(b) of Act 51 of 1977, the accused admitted that he had kicked the complainant to the ground and thereafter several times more while on the ground so that he would 'be afraid and give me his things'. He proceeded to admit the other elements of the crime.

[3] The presiding magistrate correctly convicted the accused. The matter was then remanded to 19 September 2013 for sentencing.

[4] No previous convictions were proved. In mitigation, the accused said that he was 30 years old, single and without children. He said he is a self employed craftsman, making necklaces which he then sells. He said that he financially assisted his mother. He asked that a fine of N\$1 200 should be imposed. He was questioned about the crime he had committed and acknowledged that it occurred

at night, that he had injured the complainant and that he had some N\$1 200 available to pay a fine.

[5] The magistrate then referred to each of the triad of factors to be considered in sentencing, namely the crime committed, the accused's personal circumstances and the interests of society. After discussing each factor, the magistrate proceeded to sentence him to a fine of N\$4 000 or 12 months imprisonment.

[6] Despite the fact that the accused was a first offender and the mitigating factors raised by him, I find that this sentence is startlingly inappropriate in the circumstances.

[7] The magistrate correctly acknowledged in the judgment that robbery is a serious crime and also said that it is prevalent in Okahandja. The magistrate also noted other aggravating features – of the accused kicking the complainant to the ground and then continuing to kick him on the ground and that the items were not recovered. The magistrate also noted that, the accused had not been motivated by need but rather by greed by referring to his evidence that he had N\$1 200 saved up. To these factors, I may add that the crime was committed at night. Despite these factors, the magistrate did not impose a custodial sentence. In my view, this induces a sense of shock and is most inappropriate for the crime of robbery by failing to properly take into account the interests of society and the seriousness of the crime. The aggravating features of this serious crime would in my view justify a custodial sentence of some duration even though the accused was a first offender. In expressing this view, I agree with what was stated in *S v*

*Immanuel Paulus*<sup>1</sup> where this court in turn cited with approval remarks made in the context of sentencing those convicted of robbery by De Wet CJ in *S v Myute and Others*; *S v Baby*.<sup>2</sup> In that matter, De Wet CJ rightly stressed the severity and seriousness of the crime of robbery in the following way:

*'Magistrates should never lose sight of the fact that robbery is a most serious crime. The offence consists of the two elements of violence and dishonesty. Normally an individual can avoid situations which lead to violence and the danger of his being assaulted by the taking of the necessary precautionary measures. Similarly he can take steps to guard against his property being stolen. It is a different matter when it comes to robbery. The victim cannot take precautions against robbery. In his day to day living he visits friends, goes to work and goes shopping. This is usually when robbers strike. Robbers often roam the townships in gangs, attacking innocent people, depriving them of their property and almost invariably injuring the victims, sometimes seriously. The persons robbed are more often than not women or elderly people who cannot defend themselves. It must also be remembered that robbery is always a deliberately planned crime. The legislature regards robbery in such a serious light that, when in the course of a robbery, a firearm or any other dangerous weapon is used, or where grievous bodily harm is inflicted or threatened, such robbery is termed robbery with aggravating circumstances (see S 1(1) (i) (b) of Act 51 of 1977).'*

As was said in *Guas v State*,<sup>3</sup> these remarks are apposite to Namibia and in the context of the facts of this matter.<sup>4</sup>

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<sup>1</sup>Case No. CA 114/1998, unreported 28/3/2000.

<sup>2</sup>1985 (2) SA 61 (ckS).

<sup>3</sup>Supra at 62 D-G.

<sup>4</sup>See also *Guas v State* unreported 10 April 2012, case no. CA 26/2009 par [4].

[8] Even though the magistrate acknowledged the seriousness of the crime robbery and the aggravating features, the magistrate however failed to give sufficient weight to these factors. As a consequence, the sentence is in my view shockingly inappropriate and does in my view not accord with justice. I thus find myself unable to confirm the sentence and decline to do so.

[9] The conviction is however confirmed but I decline to confirm the sentence. The Registrar is directed to provide a copy of this judgment to the office of the Prosecutor-General.

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DF Smuts  
Judge

I agree

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PT Damaseb  
Judge-President