



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR: 69/2013

In the matter between:

THE STATE

and

NAFTALI ITULA

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1462/2013)

Neutral citation: *S v Itula* (CR69/2013)[2013] NAHCMD 312 (01 November 2013)

Coram: HOFF J and UNENGU AJ

Delivered: 01 November 2013

ORDER

- (a) The conviction is confirmed.
- (b) The sentence is set aside and substituted with the following sentence:

18 months imprisonment of which 9 months imprisonment is suspended for a period of three years on condition the accused is not convicted of the crime of malicious damage to property committed during the period of suspension.

- (c) The sentence is antedated to 01.08.2013.

JUDGMENT

HOFF J (UNENGU AJ concurring):

[1] The accused was convicted in the Omaruru magistrate's court of the crime of malicious damage to property and sentenced to a fine of N\$5000 or 36 months imprisonment.

[2] The accused admitted intentionally cutting the cables of an alarm system at Spar supermarket valued at N\$5800. The accused was a first offender.

[3] I queried the presiding magistrate in respect of the period of 36 months imprisonment imposed by him. In his reply the magistrate conceded that the sentence imposed was unduly harsh.

[4] The accused is 24 years old, is unemployed, and unmarried with no dependants. The accused stated in mitigation of sentence that he would not be able

to pay a fine and that he was in the process of improving his Grade 12 examination results.

[5] I agree that the sentence of 36 months imprisonment is an unduly harsh in the circumstances, that the magistrate over-emphasised the interests of the community and did not give due consideration to the personal circumstances of the accused person and the fact that he was first offender.

[6] This court is thus in these circumstances justified to interfere with the sentence imposed.

[7] The accused was sentenced on 01.08.2013 and did not pay the fine. I am of the view that a sentence which is partly suspended would be an appropriate sentence.

[8] In the result the following orders are made:

(a) The conviction is confirmed.

(b) The sentence is set aside and substituted with the following sentence:

18 months imprisonment of which 9 months imprisonment is suspended for a period of three years on condition the accused is not convicted of the crime of malicious damage to property committed during the period of suspension.

(c) The sentence is antedated to 01.08.2013.

E P B HOFF
Judge

4
4
4
4
4

E P UNENGU
Acting Judge