

HIGH COURT OF
DIVISION, WINDHOEK



NAMIBIA MAIN

JUDGMENT

Case no: CR 77/2013

In the matter between:

THE STATE

and

AGGIES GOWASEB

(HIGH COURT MAIN DIVISION REVIEW REF NO.: 1703/2013)

Neutral citation: *S v Gowaseb* (CR 77/2013)[2013]NAHCMD345(20 November 2013)

Coram: MILLER AJ *et* SMUTS J

Delivered: 19 November 2013

ORDER

I will set aside the sentence imposed and substitute it with the following sentence:

'Fined N\$3000.00 (three thousand Namibian dollars) or 2 (two) years imprisonment of which N\$1500.00 (one thousand five hundred Namibian dollars) or 1 (one) year imprisonment suspended for a period of 2 (two) years on condition that the accused is not convicted of the crime of assault with intent to cause grievous bodily harm committed within the period of suspension.'

JUDGMENT

MILLER AJ :

[1] In this matter the accused was convicted of the crime of assault with the intent to do grievous bodily harm.

[2] The conviction is in order and must be confirmed.

[3] The learned presiding magistrate imposed the following sentence:

'N\$3000.00 (Three thousand Namibian dollars) or 2 years direct on condition accused is not convicted of assault with intend (sic) to do grievous bodily harm during period of suspension, of which N\$1500.00 (One thousand five hundred Namibian dollars) or 1 year direct imprisonment is suspended for period of 2 years.'

[4] With all due respect to the learned magistrate, the sentence imposed is confusing to say the least of it.

[5] What the magistrate had in mind appears from a passage in the record which reads as follows:

'COURT: So he has to pay One Thousand Five Hundred Namibian dollars (N\$1500.00) in capital or one (1) year. If he does not pay One Thousand Five Hundred Namibian dollars (N\$1500.00) it does mean he will be put away for one (1) year.'

[6] As matters turned out though her intention did not translate itself in the words used to express it.

[7] I will set aside the sentence imposed and substitute it with the following sentence:

'Fined N\$3000.00 (three thousand Namibian dollars) or 2 (two) years imprisonment of which N\$1500.00 (one thousand five hundred Namibian dollars) or 1 (one) year imprisonment suspended for a period of 2 (two) years on condition that the accused is not convicted of the crime of assault with intent to cause grievous bodily harm committed within the period of suspension.'

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P J MILLER
Judge

I agree

D SMUTS
Judge