



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 80/2013

In the matter between:

THE STATE

and

ERASTUS IMMANUEL

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO.: 1375/2013)

Neutral citation: *State v Immanuel* (CR 80-2013) [2013] NAHCMD 352 (22 November 2013)

Coram: HOFF J and UNENGU AJ

Delivered: 22 November 2013

ORDER

In the result, the following order is made:

1. The conviction is in order and confirmed.
2. The sentence of '36 months imprisonment of which 12 months is suspended for period of 5 years on condition that accused does not commit crime of robbery during period of suspension', imposed by the magistrate, is set aside and substituted with the following sentence:

'36 months imprisonment of which 12 months is suspended for a period of five (5) years on condition that the accused is not convicted of the offence of Robbery committed within the period of suspension'.

JUDGMENT

UNENGU AJ (HOFF J concurring):

[1] The accused in the matter was charged with and convicted of a crime of Robbery with aggravating circumstances, and sentenced by the learned magistrate as follows:

'36 months imprisonment of which 12 months is suspended for period of 5 years on condition that accused does not commit crime of robbery during period of suspension'.

[2] The formulation of the condition of suspension that accused does not commit crime of robbery during period of suspension, is wrong and as a reason therefore, I queried the learned magistrate.

[3] Meanwhile, the magistrate in her response to the query, had conceded that the formulation of the suspended sentence was incorrectly phrased and proposed that it should read as follows:

'36 months imprisonment of which 12 months is suspended for a period of five (5) years on condition that the accused is not convicted of the offence of Robbery committed within the period of suspension'.

[4] The proposal by the learned magistrate is in order and the condition of the suspended sentence will be phrased accordingly.

[5] In the result, the following order is made:

1. The conviction is in order and confirmed.

2. The sentence of '36 months imprisonment of which 12 months is suspended for period of 5 years on condition that accused does not commit crime of robbery during period of suspension', imposed by the magistrate, is set aside and substituted with the following sentence:

'36 months imprisonment of which 12 months is suspended for a period of five (5) years on condition that the accused is not convicted of the offence of Robbery committed within the period of suspension'.

PE Unengu
Acting

E Hoff
Judge