



HIGH COURT OF MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 24/2013

In the matter between:

THE STATE

APPLICANT

And

ISMAEL TJIZU

RESPONDENT

(HIGH COURT MAIN DIVISION CASE NO 1004/2012)

Neutral citation: *The State v Tjizu (CR 24/2013) [2013] NAHCNLD 84 (28 MARCH 2013)*

Coram: NDAUENDAPO J et UNENGU ACTING

Delivered: 28 March 2013

JUDGMENT

NDAUENDAPO J (UNENGU acting, concurring)

[1] The accused, Ismael Tjizu, appeared in the magistrate's court at Swakopmund on a charge of theft.

He pleaded guilty and was convicted as charged and the matter was disposed of in terms of section 112 (1) (b) of Act 51 of 1977. He was sentenced as follows:

[2] 'Fined N\$1000 (one thousand Namibian dollars) of which N\$1000 (one thousand Namibian dollars) is suspended for a period of 2 (two) years on the following conditions.

1. That the accused is not convicted of theft or attempted theft committed during the period of suspension or

4 (four) months imprisonment of which 4 (four) months is suspended for a period of 2 (two) years on the following condition.

[3] That the accused is not convicted of theft or attempted theft committed during the period of suspension'.

[4] The sentence is confusing and not in accordance with the law and cannot be allowed to stand.

[5] In the result, I make the following order

(1) The conviction is confirmed

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

Fined N\$1000 (one thousand Namibian dollars) or in default of payment four months imprisonment wholly suspended for a period of 2 years on condition that the accused is not convicted of theft or attempted theft committed during the period of suspension.

GN NDAUENDAPO
JUDGE

EP UNENGU
ACTING JUDGE