



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR: 01/2014

In the matter between:

THE STATE

and

MUBITA DERICK MATE

ACCUSED NO. 1

SIKOTA MUBITA

ACCUSED NO. 2

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1758/2013)

Neutral citation: *S v Mate* (CR 01/2014) [2014] NAHCMD 20 (28 January 2014)

Coram: HOFF J and NDAUENDAPO J

Delivered: 28 January 2014

ORDER

(a) The conviction is confirmed.

(b) The sentence is amended to read as follows:

24 months imprisonment which are suspended for a period of 5 years on condition that the accused is not convicted of the crime of assault with intent to do grievous bodily harm or the crime of common assault or the crime of assault by threat committed during the period of suspension and where in respect of the crime of common assault or assault by threat the accused is sentenced to a direct term of imprisonment of not less than six months.

JUDGMENT

HOFF J (NDAUENDAPO J concurring):

[1] The two accused persons were convicted of the crime of assault with intent to do grievous bodily harm after having pleaded guilty and admitting that they had assaulted the complainant by beating him with a stick. The accused persons were sentenced as follows:

'24 months imprisonment wholly suspended for a period of 5 years on condition that you are not found guilty of assault with intent to do grievous bodily harm, assault common, assault by threat and/or violence related crimes committed during the period of suspension.'

[2] I directed the following query to the magistrate:

'The accused were convicted of assault with intent to do grievous bodily harm. One of the conditions in the suspended sentence refers to 'violence related crimes'. Could you

please explain what was intended with violence related crimes? Violence related crimes may include crimes such as murder, rape or malicious damage to property. Why was this condition of suspension in such wide terms?’

[3] The magistrate in reply readily conceded that the condition of suspension was framed in too wide terms and suggested that the phrase ‘violence related crimes’ be deleted.

[4] I agree, but need to make a few remarks regarding the other conditions referred to by the magistrate in his sentence namely assault common and assault by threat.

[5] This court has held that a condition of suspension should only refer to an offence which has a material connection to the nature and circumstances of the offence of which the accused had been convicted of ie it must not be so wide that it has no nexus with the offence the accused had been convicted of.¹

[6] The offences of common assault and assault by threat are not unrelated to the offence of assault with intent to do grievous bodily harm, however in the event that an accused person be convicted of the offence of common assault or the offence of assault by threat, there is a real possibility that the period of 24 months imprisonment may be put into an operation. The warning must be repeated that care should be taken to ensure that a severe suspended sentence is not put into operation by the contravention of a petty offence.²

[7] A court must therefore formulate the condition of suspension in such a way to eliminate this danger. This can be done by imposing an appropriate qualification, for example that the suspended sentence can only be put into operation when effective imprisonment of a specific period is imposed for the subsequent conviction.

¹ S v Guruseb 2013 (3) NR 630 at 631B; S v Motuko 2006 (1) SACR (CKHC) 264.

² Guruseb supra; S v Allart 1984 (2) SA 731 (T); S v Mnguni & Others 1985 (2) SA 448 (N).

[8] Conditions of suspension furthermore must be reasonable and should be formulated in such a way that they do not cause future unfairness and injustice.³

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

- (a) The conviction is confirmed.
- (b) The sentence is amended to read as follows:

24 months imprisonment which are suspended for a period of 5 years on condition that the accused is not convicted of the crime of assault with intent to do grievous bodily harm or the crime of common assault or the crime of assault by threat committed during the period of suspension and where in respect of the crime of common assault or assault by threat the accused is sentenced to a direct term of imprisonment of not less than six months.

E P B HOFF
Judge

³ See Guruseb (supra) p. 632

5
5
5
5
5

N NDAUENDAPO

Judge