



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**REVIEW JUDGMENT**

Case no: CR 42/2016

In the matter between:

**THE STATE**

And

**AMBROSIUS SWARTBOOI AND 2 OTHERS**

**ACCUSED**

**(HIGH COURT MAIN DIVISION REVIEW REF NO. 406/2016)**

**Neutral citation:** State v Swartbooi and Another (CR 42/2016) [2016] NAHCMD 151 (20 May 2016)

**Coram:** SIBOLEKA J and USIKU J

**Delivered:** 20 May 2016

**Flynote:** Criminal Procedure – Sentence – Magistrate using wrong term namely “all” instead of “each” when sentencing the three accused persons on a charge of theft of stock – on review the term “all” is replaced with “each”.

**Summary:** Criminal procedure – Sentence – Formulation of sentence not only unclear but also bad in law – Court setting it aside – Sentence replaced with another sentence.

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## ORDER

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

Each accused is sentenced to one year imprisonment without an option of a fine.

The sentence is antedated to 25 November 2015.

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## REVIEW JUDGMENT

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USIKU J, (SIBOLEKA J CONCURRING)

[1] The three accused persons were arraigned in the Karasburg magistrate court on a charge of stock theft. Each accused person pleaded guilty to the charge where after the court proceeded to question each accused in terms of section 112 (1) (b) the Criminal Procedure Act 51 of 1977 as amended were each found guilty as pleaded and were sentenced.

[2] The learned magistrate imposed the following sentence:

- (a) (1) one year imprisonment without the option of a five for all (3) three accused persons.

[3] I am satisfied that the convictions are in accordance with justice. However the manner in which the sentence has been formulated by the learned magistrate is not only unclear, but is also bad in law. It is important that the sentence must be clear for all to understand. This is so in order for it to be carried out without any difficulty.

[4] The word “all” is confusing and difficult to understand.

[5] In the result:

(a) The conviction is confirmed.

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

Each accused is sentenced to one year imprisonment without an option of a fine.

The sentence is antedated to 25 November 2015.

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DN USIKU  
Judge

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A SIBOLEKA  
Judge