

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA, MAIN DIVISION

JUDGMENT

CR No: 31/2016

In the matter between

THE STATE

And

MELVIN GEINUB

ACCUSED NO 1

DENNIS HAUSEB

ACCUSED NO 2

PETRUS GOAGOSEB

ACCUSED NO 3

HIGH COURT MD REVIEW CASE NO 574/2016

Neutral citation: State v Geinub (CR 31/2016) [2016] NAHCMD 94 (06 April 2016)

CORAM: LIEBENBERG J *et* SHIVUTE J

DELIVERED: 06 April 2016

Flynote: Criminal procedure – Sentence – Condition of suspension – Condition that accused not to be convicted of prohibited offence *committed during period of suspension* omitted – Sentence corrected.

ORDER

1. The conviction of each of the accused is confirmed.
2. The sentences imposed are confirmed, but amended to read: Each accused is sentenced to a fine of N\$2 000 or 12 months' imprisonment, of which N\$1 000 or 6 months' imprisonment is suspended for a period of five (5) years, on condition that the accused is not convicted of a contravention of Section 30 (1)(a) of Ordinance 4 of 1975, committed during the period of suspension.

JUDGMENT

LIEBENBERG J: (Concurring SHIVUTE J)

[1] The accused were convicted on their pleas of guilty of hunting one Oryx in contravention of s 30 (1)(a) of Ordinance 4 of 1975 (Nature Conservation Ordinance,

1975). The convictions are in order and will be confirmed. In view of the sentences imposed, the matter became reviewable in terms of s 302 (1) of the Criminal Procedure Act, 51 of 1977.

[2] Each of the accused was sentenced to a fine of N\$2 000 or, in default, 6 months' imprisonment of which half suspended on condition of good conduct. However, when formulating the conditions of suspension, the presiding magistrate omitted to insert the phrase that the accused should not in future be convicted of the prohibited offence *committed during the period of suspension*. To this end the sentence stands to be corrected.

[3] Although s 304 (2)(a) in imperative terms states that the review judge must obtain from the presiding magistrate a statement setting forth reasons for the conviction and/or sentence imposed, the procedure is subject to the proviso that where the conviction and/or sentence is clearly not in accordance with justice and the person convicted may be prejudiced if the record of the proceedings is not forthwith place before the court, the judge may review proceedings without first obtaining the presiding magistrate's statement.

[4] The oversight by the magistrate on the formulation of one of the conditions of suspension is elementary and should have been guarded against; more so where this court in the past has delivered a number of similar judgments in cases where the same mistake has repeatedly been made. Accordingly, I did not deem it necessary to first obtain reasons from the presiding magistrate in the present instance.

[5] In the result, it is ordered:

1. The conviction of each of the accused is confirmed.
2. The sentences imposed are confirmed, but amended to read: Each accused is sentenced to a fine of N\$2 000 or 12 months' imprisonment, of which N\$1 000 or 6 months' imprisonment is suspended for a period of five (5) years, on condition that the accused is not convicted of a contravention of Section 30 (1)(a) of Ordinance 4 of 1975, committed during the period of suspension.

J C LIEBENBERG

JUDGE

N N SHIVUTE

JUDGE