



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 30/2017

THE STATE

versus

JOSEPH SHITAPATA

(HIGH COURT MAIN DIVISION REVIEW REF NO 632/2017)  
(MAGISTRATE'S SERIAL NO. 55/2016)

**Neutral citation:** *S v Shitapata* (CR 30/2017) [2017] NAHCMD 134 (12 May 2017)

**Coram:** LIEBENBERG J et SHIVUTE J

**Delivered:** 12 May 2017

**Flynote:** Criminal Procedure – Sentence – Condition of suspension – Condition that accused is not convicted of theft related offences during the period of suspension too vague. Such condition leads to uncertainty – Condition must be clear – Accused should know what conditions he is prohibited to do – Condition amended to read accused not convicted of theft committed during the period of suspension.

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**ORDER**

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- a) The conviction is confirmed.
- b) The sentence is confirmed but amended to read:  
    'A fine of N\$5000 (five thousand Namibia Dollar, or 24 (twenty four) months' imprisonment of which N\$2500 (two thousand five hundred Namibia Dollar or 12 (twelve) months are suspended for 5 (five) years on condition that accused is not convicted of theft committed during the period of suspension.'
- c) The sentence is back dated to 4 October 2016.

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**REVIEW JUDGMENT**

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SHIVUTE J, (LIEBENBERG J CONCURRING)

[1] The accused was convicted of theft and he was sentenced to 'N\$5000 (five thousand Namibia Dollar) of which N\$2500 (two thousand five hundred Namibia Dollars) is suspended for a period of 5 (five) years on condition that accused is not convicted of theft related offences committed during the period of suspension or 24 (twenty four) months imprisonment of which 12 (twelve) months is suspended for a period of 5 (five) years on condition that the accused is not convicted of theft related offences committed during the period of suspension.'

[2] I queried the learned magistrate what he meant by 'accused is not convicted of theft related offences' and whether the sentence is not too vague.

[3] The learned magistrate in her reply conceded that the sentence is too vague and she requested the sentence to be amended and read as follows:

    'Accused sentenced to a fine of N\$5000 (five thousand Namibia Dollar) in default of payment 24 (twenty four) months' imprisonment of which N\$2500 (two thousand five hundred Namibia Dollar) or 12 (twelve) months are suspended for a period of 5 (five) years

on condition that accused is not convicted of theft committed during the period of suspension.

[4] The learned magistrate rightly conceded that the sentence is too vague. The condition that accused is not convicted of theft related offences during the period of suspension leads to uncertainty. The condition of suspension must be related to the offence in question and it should be clear, understood by the accused and he must know what conduct he is prohibited to do.

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

- a) The conviction is confirmed.
- b) The sentence is confirmed but amended to read:

'A fine of N\$5000 (five thousand Namibia Dollar) or 24 (twenty four) months' imprisonment of which N\$2500 (two thousand five hundred Namibia Dollar) or 12 (twelve) months are suspended for 5 (five) years on condition that accused is not convicted of theft committed during the period of suspension.'

- d) The sentence is back dated to 4 October 2016.

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NN SHIVUTE  
Judge

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JC LIEBENBERG  
Judge