

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA, MAIN DIVISION
REVIEW JUDGMENT**

CR NO: 64/2017

In the matter between:

THE STATE

and

SEREDT UIRAB

**(HIGH COURT MAIN DIVISION REVIEW NO. 1293/2017)
(MAGISTRATE SERIAL NO. 10/2017)**

Neutral citation: S v Uirab (CR 64/2017) [2017] NAHCMD 321 (10 November 2017)

CORAM: SHIVUTE J and SALIONGA AJ

DELIVERED: 10 NOVEMBER 2017

Flynote: **Criminal Procedure** – Sentence – Condition of suspension – Condition of suspension too vague. Such condition leads to uncertainty – Condition must be clear -- Accused should know exactly which offence he is prohibited from committing – during the period of suspension– Condition of suspension amended.

ORDER

- a) The conviction is confirmed. The sentence is amended to read as follows:
- b) The accused is sentenced to a fine of N\$ 1500 (One Thousand Five Hundred Namibia Dollars) or 6 (six) months imprisonment wholly suspended for a period of 12 months on condition that the accused is not convicted of theft committed during the period of suspension.

REVIEW JUDGMENT

SHIVUTE J, (SALIONGA AJ CONCURRING)

[1] The accused was convicted of theft of a cell phone 1 x ZTE valued at N\$1000.00. He was sentenced to a fine of N\$1500.00 (One Thousand Five Hundred Namibia Dollars) or six months imprisonment wholly suspended for a period of 12 months on condition that the accused is not convicted of theft committed within the period of suspension.

[2] I raised a query with the learned magistrate as to whether the condition of suspension is not too vague, because the sentence imposed reads that 'the accused is sentenced to a fine of N\$ 1500 (One Thousand Five Hundred Namibia Dollars or 6 months imprisonment in default of payment which is wholly suspended for a period of 12 months provided accused is not convicted of same offence in the period of suspension'. The learned magistrate rightfully conceded that it was an oversight on his part.

[3] In light of the oversight referred to above, the conviction and sentence will be allowed to stand with the exception that the wording of the suspension condition be amended. The condition that the accused is not convicted of the same offence in the period of suspension leads to an uncertainty. The condition of suspension must be clear

and understood by the accused and he must know what he is prohibited from committing. There should be no room for guessing by the accused in respect to what the order of the court is.

[4] In the result, I make the following order:

- a) The conviction is confirmed. The sentence is amended to read as follows:
- b) The accused is sentenced to a fine of N\$ 1500 (One Thousand Five Hundred Namibia Dollars) or 6 (six) months imprisonment wholly suspended for a period of 12 months on condition that the accused is not convicted of theft committed during the period of suspension.

NN SHIVUTE
JUDGE

J SALIONGA
ACTING JUDGE