

<b>Case Title:</b> <i>The State v Kabanga Enrico</i>	<b>Case No:</b> CR 81/2018
	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Honourable Mr Justice Ndauendapo <i>et</i> Honourable Mr Justice Liebenberg	<b>Delivered on:</b> 22 October 2018
<b>Neutral citation:</b> <i>S v Kabanga Enrico</i> (CR 81/2018) [2018] NAHCMD 333 (22 October 2018)	
<b>The order:</b> <p>(a) The sentence is amended to read as follows:</p> <p style="padding-left: 40px;">The accused is sentenced to a fine of N\$ 3000.00 or in default of payment 12 months' imprisonment, plus a further six (6) months' imprisonment, wholly suspended for a period of 5 years on condition that the accused is not convicted of assault with intent to do grievous bodily harm, committed during the period of suspension.</p> <p>(b) The sentence is antedated to 09 August 2018.</p>	
<b>Reasons for order:</b>	
LIEBENBERG J (concurring NDAUENDAPO J) <ol style="list-style-type: none"> <li>1. This is a review brought in terms of section 304 (2) of the Criminal Procedure Act 51 of 1977 as amended.</li> <li>2. The accused was sentenced to a fine of 'N\$ 3000.00 or in default of payment 12 months' imprisonment on addition another 6 months direct imprisonment wholly suspended for a period of 5 years on condition that you are not convicted of assault with intent to do grievous bodily harm committed during the period of suspension'.</li> </ol>	

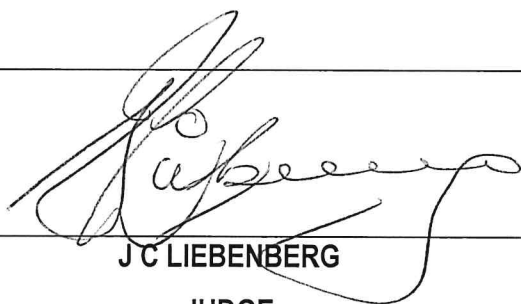
3. The sentence imposed by the court *a quo* is ambiguous. Over and above the fine imposed, a further term of imprisonment of six (6) months was imposed, the latter being wholly suspended on the usual conditions. However, reference to 'direct imprisonment' gives the impression that the sentence must also be served in addition to the fine imposed. This was clearly not intended and seems to be a bona fide mistake. A sentence should only have one interpretation to such an extent that all who read it are aware of the court's ruling.

4. In the result, it is ordered that:

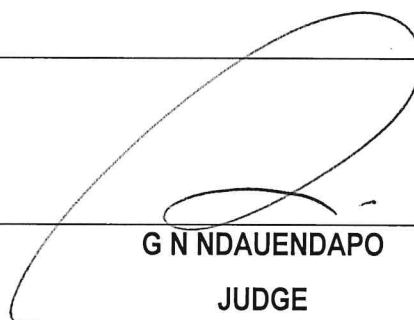
(a) The sentence is amended to read as follows:

The accused is sentenced to a fine of N\$ 3000.00 or in default of payment 12 months' imprisonment, plus a further six (6) months' imprisonment, wholly suspended for a period of 5 years on condition that the accused is not convicted of assault with intent to do grievous bodily harm, committed during the period of suspension.

(b) The sentence is antedated to 09 August 2018.



J C LIEBENBERG  
JUDGE



G N NDAUENDAPO  
JUDGE