

IN THE HIGH COURT OF NAMIBIA (MAIN DIVISION)

Case Title: <i>The State v Sitwala Ntwala Aldilids</i>	Case No: CR 44/2019
High Court MD Review No: 1191/2019	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Lady Justice Shivute	Delivered on: 17 June 2019
Neutral citation: <i>S v Aldilids</i> (44/2019) [2019] NAHCMD 190 (17 June 2019)	
The order: a. The conviction is confirmed. b. The sentence is confirmed but the conditions are amended and substituted thus: N\$ 2 000 or 6 months' imprisonment, wholly suspended for 3 years on condition that the accused is not convicted of assault with intent to do grievous bodily harm, committed during the period of suspension, plus the performance of 105 hours of community service to be performed at the Rundu Magistrate's Court during the period 12 February 2018 up to and including 06 April 2018 between the hours 08h00 – 17h00, every Monday to Friday, excluding public holidays. During such period the accused shall be entitled to leave of absence and be subject to supervision and control of Mrs. Van Wyk or a person duly delegated for such purpose.	
Reasons for order:	
LIEBENBERG J (concurring SHIVUTE J) 1. This is a review in terms of s 302 of the Criminal Procedure Act 51 of 1977 (the CPA). 2. The accused was charged in the magistrate's court for the district of Rundu	

with the offence of assault with intent to do grievous bodily harm.

3. The accused pleaded guilty and after the court's questioning in terms of s 112(1)(b) of the CPA he was convicted as charged. Thereafter the court sentenced the accused to: *"N\$ 2 000 or 6 months imprisonment wholly suspended on the following conditions: (a) N\$ 1 000-00 or 3 months wholly suspended for 3 years on condition accused is convicted of assault grievous bodily harm committed during the period of suspension. (b) N\$ 1 000-00 or 3 months imprisonment wholly suspended on condition accused performs 105 hours of community service at Rundu magistrate's court. Community service starts on 12-02-2018 ta 14h00 – 17h00 ever Monday to Friday which is not on public holiday on good cause shown accused will be granted leave of absence but that leave will not count as part of community service to be done. Accused to work under the supervision of Mrs. Van Wyk or the person so delegated. Community service to be completed by 06-04-2018."* (sic)
4. The conviction and sentence are in order but the conditions attached to sentence are, quite apart from being structurally incoherent, incompetent and cannot be allowed to stand. Condition (a) above is fraught with ambivalence and inexorably renders the actual sentence imposed nugatory. Condition (b), save for the community service imposed, suffers a fate similar to condition (a).
5. This Court is of the opinion that the nature of the conditions imposed on sentence are such that they are evidently not in accordance with justice. There must be certainty in the conditions imposed so as to enable the accused to meaningfully appreciate the prohibition which would render operative the suspended portion of the sentence. Accordingly, and as contemplated in the proviso to s 304(2)(a) of the CPA, this Court determines the matter without reference to the presiding magistrate who in the meantime has resigned from the magistracy.
6. Conditions that are vague cannot be allowed to stand.¹ This Court, concurring

with the substance of the presiding magistrate's imposition of sentence, confirms that a sentence of N\$ 2 000 or 6 months' imprisonment is competent and just, subject to an alteration of the conditions.

7. In the result it is ordered:

- a. The conviction is confirmed.
- b. The sentence is confirmed, subject to an amendment of the conditions so as to read: N\$ 2 000 or 6 months' imprisonment, wholly suspended for 3 years on condition that the accused is not convicted of assault with intent to do grievous bodily harm, committed during the period of suspension, plus the performance of 105 hours of community service to be performed at the Rundu Magistrate's Court during the period 12 February 2018 up to and including 06 April 2018 between the hours 08h00 – 17h00, every Monday to Friday, excluding public holidays. During such period the accused shall be entitled to leave of absence and be subject to supervision and control of Mrs. Van Wyk or a person duly delegated for such purpose.

JC LIEBENBERG
JUDGE

NN SHIVUTE
JUDGE

¹ See, generally, *S v Tomas* 1991 NR 104 (HC).