



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 50/2019

In the matter between:

THE STATE

and

NDUMBA MATHEUS

ACCUSED ONE

UUPINDI WILBARD

ACCUSED TWO

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1088/2019)

Neutral citation: *S v Ndumba* (CR 50/2019) [2019] NAHCMD 238 (15 July 2019)

Coram: NDAUENDAPO, J and UNENGU, AJ

Delivered: 15 July 2019

Flynote: Criminal Procedure – Automatic review – Error – Condition of suspension – Sentence imposed by Magistrate set aside and substituted.

Summary: Two accused persons charged with Housebreaking with intent to steal and theft, were convicted and sentenced to a suspended sentence. However, the condition for the suspension of the sentence was incompetent in law, therefore, corrected on review by substituting the sentence imposed with a competent sentence.

ORDER

- (a) The conviction for both accused is confirmed.
- (b) The sentence imposed by the magistrate is set aside and substituted with the following sentence:
- ‘Six (6) months imprisonment wholly suspended for three (3) years on condition accused is not convicted of Housebreaking with intent to steal and theft committed during the period of suspension.’
- (c) The sentence is backdated to 05 July 2018.

REVIEW JUDGMENT

UNENGU, AJ (NDAUENDAPO, J concurring):

[1] This review matter was submitted for automatic review by the magistrate sitting at the Rundu Magistrate’s Court.

[2] The two accused persons in the matter who conducted their own defence were charged with and convicted of Housebreaking with the intent to steal and theft and sentenced as follows:

‘Six (6) months imprisonment wholly suspended for 3 years on condition accused is not convinced of Housebreaking and theft committed during the period of suspension.’

[3] Apart from the fact the word “convicted” was wrongly typed as “convinced” on the review sheet, the crime the two accused were prohibited or not allowed to commit during the period of suspension, namely “Housebreaking and theft” is not a crime in law.

[4] That being the case and because of the above-mentioned error, I addressed a query to the presiding magistrate as to whether the condition for the suspension of the sentence was competent in law. In response, the query the principal magistrate for Rundu responded that the magistrate who presided over the matter has since returned to her country of origin, therefore, could not respond to the query.

[5] Be that as it may, the error in the sentence will be corrected by substituting it with a competent condition of suspension. The conviction in respect of both accused is in order and will be confirmed.

[6] Consequently the following order is made:

(a) The conviction for both accused is confirmed.

(b) The sentence imposed by the magistrate is set aside and substituted with the following sentence:

‘Six (6) months imprisonment wholly suspended for three (3) years on condition accused is not convicted of Housebreaking with intent to steal and theft committed during the period of suspension.’

(c) The sentence is backdated to 05 July 2018.

E P UNENGU
Acting Judge

N NDAUENDAPO
Judge