

Case Title: <i>The State v Jesaya Tetela</i>	Case No: CR 24/2019
High Court MD Review No: 138/2018	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Lady Justice N N Shivute	Delivered on: 01 April 2019
Neutral citation: <i>S v Tetela</i> (CR 24 /2019) [2019] NAHCMD 76 (01 April 2019)	
The order: <ol style="list-style-type: none"> 1. The conviction is confirmed: 2. The sentence is confirmed but amended to read: 'N\$4 000.00 (Four Thousand Namibian Dollars) or 6 (Six) months' imprisonment of which N\$ 2000.00 (Two Thousand Namibian Dollars) or 3 (three) months' imprisonment is suspended for a period of 5 (five) years on condition that the accused is not convicted of assault, committed during the period of suspension.' 	
Reasons for order:	
LIEBENBERG J (concurring SHIVUTE J) <ol style="list-style-type: none"> 1. This is a review in terms of section 302(1) of the Criminal Procedure Act 51 of 1977 (the CPA) as amended. 2. The accused appeared in the Magistrate's Court in the district of Lüderitz on a charge of assault by threat r/w with the provisions of the <i>Domestic Violence Act</i>, 4 of 2003. The accused pleaded guilty and the court convicted the accused in terms of section 112(1)(a) of the CPA. 	

3. The only issue lies with the manner in which the sentence was framed. The accused was sentenced to a fine of 'N\$4 000.00 (Four Thousand Namibian Dollars) or 6 (Six) months' imprisonment of which N\$2 000.00 (Two Thousand Namibian Dollars) or 3 (three) months' imprisonment is suspended for a period of 5 (five) years on condition accused is not convicted of contravening any provision of Act 4 of 2003 committed during period of suspension'.

4. The court in *S v Angula*¹ stated the following with regards to conditions of suspension not clearly formulated:

' [3] The general principle in the formulation of a sentence is that the conditions of suspension must be clear, not only so that the accused can understand what he or she has to do or avoid to ensure that the suspended sentence is not put into operation, but also that the court which later has to decide whether or not to put the sentence into operation, is able to determine the ambit of the conditions of suspension. When the conditions are not clear that court might conclude that the accused did not properly understand the conditions; or itself might be uncertain as to whether or not there was a breach of the conditions. In such instance the accused must be given the benefit of the doubt and the suspended sentence will not be put into operation. Obviously, that would defeat the purpose of the sentence imposed and will not be in the interest of justice.'

5. The condition of suspension of the sentence in the present instance is such that neither the accused nor a subsequent court would be able to determine the ambit due to the fact that the conditions of suspension being overly broad. To this end the sentence stands to be corrected.

6. The court in this instance finalised the matter in terms of s 112(1)(a) of the CPA as proposed by the State, which it was entitled to do as the subsection provides for a swift and expeditious procedure a court may adopt for the disposal of minor criminal cases where an accused pleads guilty. However, this might create the impression that the offence falls in the category of minor or less serious offences, whilst it is not the case and may send out the wrong message. In instances where the State relies on the provisions of Act 4 of 2003 it is advisable that the accused be questioned in terms of 112(1)(b) of

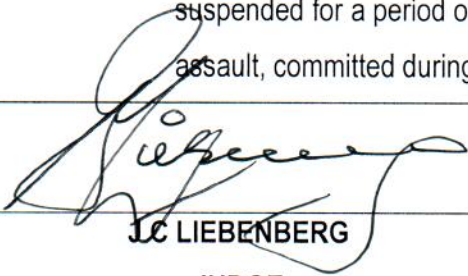
¹ (CR 12/2013) [2013] NAHCNLD 30 (21 May 2013) at para 3.

the CPA in order to determine the true nature and extent of the offence committed. Be that as it may, the conviction is in accordance with justice.

7. In the result, it is ordered that:

1. The conviction is confirmed:
2. The sentence is confirmed but amended to read:

'N\$4 000.00 (Four Thousand Namibian Dollars) or 6 (Six) months' imprisonment of which N\$ 2000.00 (Two Thousand Namibian Dollars) or 3 (three) months' imprisonment is suspended for a period of 5 (five) years on condition that the accused is not convicted of assault, committed during the period of suspension.'



J.C. LIEBENBERG

JUDGE



N N SHIVUTE

JUDGE