

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

“ANNEXURE 11”

Case Title: <i>The State v Kudumo Andreas Hamutenya and Shindjoba Erastus Ipandulwa</i>	Case No: CR 52/2020
	Division of Court: Main Division
Heard before: Honourable et Ms. Justice Usiku, J Honourable Mr. Justice Unengu, AJ	Delivered on: 06 August 2020
(HIGH COURT MAIN DIVISION REVIEW REF NO. (1094/2020))	
Neutral citation: <i>S v Hamutenya</i> (CR 52/2020) [2020] NAHCMD 336 (6 August 2020)	
The order: 1. The sentence imposed by the magistrate on each accused on 6 March 2018, is set aside and substituted with the following sentence: ‘Each accused sentenced to pay a fine of two thousand (N\$2000) Namibia dollars or twelve (12) months imprisonment wholly suspended for a period of three years on the following conditions: (i) Accused is not convicted of an offence of hunting of protected game, to wit contravening 27 (1) of the Ordinance 4 of 1975 committed during the period of suspension. (ii) Each accused performs 400 hours of community service at the Mururani Police Station starting from the 7 th the March 2018 at 8 a.m. to 13h00 and 14h00 to 17h00 every Monday to Friday excluding public holidays. On good cause shown, the accused may be granted leave of absence but such leave will count as part of community service done. (iii) The accused work under the supervision of Sgt Mbundu or the person delegated and the community service to be completed within twelve (12) weeks. (iv) The sentence is antedated to 6 Marc 2018.’	
Reasons for order:	

UNENGU, AJ (USIKU, J concurring):

[1] This matter was submitted for automatic review after an unprecedented period of one year and four months delay. The accused persons were charged with and convicted of an offence of contravening s 27(1) of Ordinance 4 of 1975, to wit hunting of protected game.

[2] They each pleaded guilty to the charge against them. They were questioned in terms of the provisions of s 112(1) (b) of the Criminal Procedure Act,¹ and were subsequently sentenced by the learned magistrate as follows: 'Each accused N\$ 200/12 months imprisonment wholly suspended on condition each accused performing 400 hours of community service at Mururani Police Station. Community service starts on 07-03-2018 at 8 a.m. to 13h00 to 17h00 every Monday to Friday which is not a 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 will work under the supervision of Sgt Mbundu or the person be delegated. Community service to be completed within 12 weeks.'

[3] The sentence is incompetent therefore, not in accordance with justice. In the meantime, the magistrate who was a Zimbabwe national, appointed on a contract basis, has returned to her country of origin before submission of the matter on automatic review. Therefore, the matter will not be referred back to the magistrate for reasons of the sentence imposed.

[4] The sentence imposed on each accused, is incompetent in many respects. It is a misdirection to suspend a sentence on condition that an accused person performs community service of a number of hours. Section 297 of the Criminal Procedure Act ought to have been followed for conditions of a suspended sentence. This the magistrate did not do. On that account, the sentence imposed by the learned magistrate cannot be allowed to stand.

E P UNENGU ACTING JUDGE	D N USIKU JUDGE

¹ Act 51 of 1977.