

'ANNEXURE 11'

IN THE HIGH COURT OF NAMIBIA

Case Title: <i>The State v Tobias Mwachindange and Another</i>	Case No: CR 59/2020
Heard before: Honourable Ms Justice Usiku Honourable Ms Justice Claasen	Division of Court: Prison Division
Neutral citation: <i>S v Mwachindange</i> (CR 59/2020) [2020] NAHCMD 361 (17 August 2020)	Delivered on: 17 August 2020
HIGH COURT MAIN DIVISION REVIEW REF NO. 1056/2020)	
Neutral citation: <i>S v Mwachindange</i> (CR 59/2020) [2020] NAHCMD 361 (17 August 2020)	
The order: The conviction is confirmed. The sentenced is substituted with the following sentence: Accused is fined N\$2000.00 (two) thousand Namibian Dollars or 12 (twelve) months imprisonment, wholly suspended for a period of 5 years on condition that accused should not be convicted of possession of housebreaking implements in contravention of s 9 of Proclamation 27 of 1920 committed during the period of suspension.	
Reasons for order: USIKU J (concurring Claasen J) [1] After this matter was submitted before me on review, I found the proceedings not to be in accordance with justice and directed the following query to the learned magistrate: 'Can a sentence be suspended for an unspecified period of time? Is the sentence a competent one?' [2] The learned magistrate responded to the query as follows:	

'1. I acknowledge that a typing error occurred on the review sheet and on the charge sheet. I apologise and it shall not happen again.'

He also proposed that the conviction be confirmed and the sentence be corrected.

[3] Indeed, the concessions made by the learned magistrate are correct.

[4] Section 297 (1)(b) of the Criminal Procedure Act 51 of 1977 provides;

Where a Court convicts a person of any offence, other than an offence in respect of which any law prescribes a minimum punishment, the Court may in its discretion;

(b) pass sentence but order the operation of the whole or any part thereof to be suspended for a period not exceeding five years on condition referred to in paragraph (a)(i) which the Court may specify in the order.

[5] Consequently, the conviction is confirmed. The sentenced is substituted with the following sentence:

Accused is fined N\$2000.00 (two) thousand Namibian Dollars or 12 (twelve) months imprisonment, wholly suspended for a period of 5 years on condition that accused should not be convicted of possession of housebreaking implements in contravention of s 9 of Proclamation 27 of 1920 committed during the period of suspension.

D N USIKU	C M CLAASEN
JUDGE	JUDGE