



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK  
REVIEW JUDGMENT

Case no: CR 109/2019

In the matter between:

THE STATE

and

KANGASI MATHEUS

ACCUSED

(HIGH COURT MAIN DIVISION REF. NO. 2031/2019)  
(MAGISTRATE SERIAL NO. 51/2017)

**Neutral citation:** *State v Matheus* (CR 109/2019) [2019] NAHCMD 5  
(20 December 2019)

**Coram:** MILLER AJ AND PARKER AJ

**Delivered:** 20 December 2019

**Flynote:** Criminal law – Accused charged in terms of section 21 of Domestic Violence Act 4 of 2003 – Offence is prevalent and interest of society need to be recognized, is no reason to impose a sentence which is startlingly inappropriate.

**Summary:** Accused was charged in terms of section 21 of Domestic Violence Act 4 of 2003. Accused was convicted and sentenced to three years' imprisonment.

Held: Review court agreed that the offence is prevalent and the interest of society requires recognition. However, same is no reason to impose a sentence which is startlingly inappropriate.

Held: The accused is sentenced to twelve months imprisonment of which eight months imprisonment are suspended for five years on condition the accused is not convicted of assault, assault with intent to cause grievous bodily harm or attempted murder committed during the period of suspension.

---

### **ORDER**

---

In the result I make the following order:

The accused is sentenced to twelve months imprisonment of which eight months imprisonment are suspended for five years on condition the accused is not convicted of assault, assault with intent to cause grievous bodily harm or attempted murder committed during the period of suspension.

---

### **REVIEW JUDGMENT**

---

MILLER AJ (PARKER AJ concurring):

[1] This matter came before me on review.

[2] The accused was convicted of assault read with the provision of Section 21 of the Domestic Violence Act, Act 4 of 2003.

[3] The complainant is the biological mother of the accused. It appears further from the evidence which the Magistrate accepted, that on the day in question some dispute about the connection of a water pipe arose between the accused and the complainant. The accused was then in possession of an axe that he was using to cut up the carcass of a cow. During the course of the argument the accused uttered a threat to the effect that he will kill the complainant. The complainant therefore locked

herself in her room. No further harm or threat befell the complainant subsequent to that.

[4] The conviction is in order and must be confirmed.

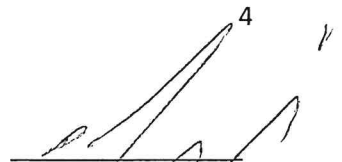
[5] Following the conviction the accused was sentenced to three years imprisonment. At the time the sentence was imposed that accused had been in custody for a period of 8 months pending the finalization of the case.

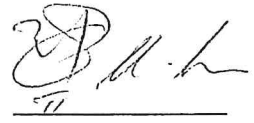
[6] The magistrate, judging from its reasons advanced for imposing the sentence aloud much emphasis on the fact that the offence is prevalent and hence the need for a sentence that is deterrent in order to protect the society. The magistrate recognized the fact the accused had already served 8 months imprisonment, so to speak, but that did not really matter since so the magistrate reasoned, the intention was in any event to impose a sentence of four years imprisonment.

[7] I have no quarrel with the magistrate concerning the fact that the offence is prevalent and that the interest of society requires recognition. That is no reason, however to impose a sentence which is startlingly inappropriate.

[8] The sentence is set aside and substituted with the following sentence:

The accused is sentenced to twelve months imprisonment of which eight months imprisonment are suspended for five years on condition the accused is not convicted of assault, assault with the intent to cause grievous bodily harm or attempted murder committed during the period of suspension.

  
P J MILLER  
Acting Judge

  
C PARKER  
Acting Judge