

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA

“ANNEXURE 11”

Practice Direction 61

<b>Case Title:</b>  The State  vs  Makumbi Mutafela  Accused	<b>Case No: CR 45/2022</b>
	<b>Division of Court:</b> High Court, Main Division
<b>Heard before:</b> Honourable Lady Justice Usiku et Claasen, J	<b>Date of hearing:</b> 20 May 2022
	<b>Delivered on:</b> 24 May 2022
<b>Neutral citation:</b> <i>S v Mutafela</i> (CR 45/2022) [2022] NAHCMD 261 (24 May 2022)	
<b>COURT ORDER</b>	
<ol style="list-style-type: none"><li>1. The conviction is confirmed.</li><li>2. The sentence is set aside and the following is put in its place: The accused is sentenced to pay a fine of N\$1 500 or 3 months imprisonment wholly suspended for 3 years on condition that the accused is not convicted with the crime of theft out of a motor vehicle, committed during the period of suspension.</li></ol>	
<b>REASONS FOR ORDERS:</b>	
USIKU J, (CLAASEN, J concurring)	

[1] In this matter the accused appeared before the Katima Mulilo magistrate court charged with the offence of theft out of a motor vehicle. The matter was disposed of in terms of s 112 (1)(a) of the Criminal Procedure Act 57 of 1977 (CPA). The accused was given a suspended sentence which had no period of suspension.

[2] When the matter was placed before me on review I directed a query to the learned magistrate in the following terms:

‘Is a sentence suspended for an indefinite period of time, a competent sentence?’

[3] The learned magistrate conceded by indicating the following:

‘A suspended sentence for an indefinite period is not a competent sentence. In this instance, the estimated completion date is 27 May 2022. However, it is not always possible for the accused to complete his or her community service hours as anticipated.

Perhaps the challenge was to compose a sentence within the framework of section 297 of the Criminal Procedure Act. I now sense that I was not successful in that regard.

Further, I submit myself to further instructions from the Honourable Review judge.’

[4] He further conceded to the fact that he had a challenge to compose a sentence within the framework of section 297 of the Criminal Procedure Act 57 of 1977.

[5] The concessions made by the learned magistrate are correctly made. The maximum period of suspension is 5 years. Such period need to be carefully considered and the maximum need not necessarily be imposed.

[6] The purpose of suspension of the whole or part of the sentence is to encourage offenders to restrain themselves from committing further offences, so that they can rehabilitate themselves.

[7] The formulation of the suspended sentence must therefore be clear to the offender in order for him/her to understand the period within which he/she is required to comply.

[8] In the result the following orders are made:

1. The convictions is confirmed.

2. The sentence is set aside and the following is put in its place:

The accused is sentenced to pay a fine of N\$1 500 or 3 months imprisonment wholly suspended for 3 years on condition that the accused is not convicted with the crime of theft out of a motor vehicle, committed during the period of suspension.

<b>D USIKU</b> <b>JUDGE</b>	<b>C CLAASEN</b> <b>JUDGE</b>