

REPUBLIC OF NAMIBIA

HIGH COURT OF
WINDHOEK
REVIEW JUDGMENT



NAMIBIA MAIN DIVISION,

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| Case Title: <i>The State</i> v <i>Rivaldo Brenton Ndaile</i> | e No: CR 87/2022 |
| Heard before: Hon. Judge Shivute et Hon. Judge January | Division of Court: Main Division |
| Delivered on: 15 August 2022 | |
| Neutral citation: <i>S v Ndaile</i> (CR87/2022) [2022] NAHCMD 414 (15 August 2022) | |
| The order: a. The conviction is confirmed. b. The sentence is altered to read as follows: N\$ 3000 or six months' imprisonment wholly suspended for three years on condition: (i) That the accused is not convicted of the offence of malicious damage to property committed within the period of suspension. (ii) That the accused compensates the complainant Elwin Ui-Nuseb, the amount of N\$ 3000. The compensation to be paid off in installments of N\$ 1000 with effect from 21 April 2022 and thereafter on or before the 7 th day of each subsequent month (N\$ 1000- 29 April 2022, N\$ 1000- 31 May 2022). Such compensation shall be paid at the Mariental Magistrate's Court, for the benefit of complainant Elwin Ui Nuseb. | |
| Reasons for order: | |
| SHIVUTE J (JANUARY J concurring): | |

[1] The accused appeared in the magistrate's court in the district of Mariental on a charge of malicious damage to property. The accused was convicted of the offence charged and sentenced as follows;

'N\$ 3000 or six (6) months imprisonment wholly suspended for three (3) years on condition:

- (i) That the accused does not commit the offence of malicious damage to property committed within the period of suspension.
- (ii) That the accused compensates the complainant Elwin Ui-Nuseb, the amount of N\$ 3000. The compensation to be paid off in installments of N\$ 1000 with effect from today, 21 April 2022, and thereafter on or before the 07th day of each subsequent month (N\$ 1000- 29 April 2022, N\$ 1000- 31 May 2022). Such compensation shall be paid at the Mariental Magistrate's Court, for the benefit of complainant Elwin Ui Nuseb.'

[2] The accused person was correctly convicted. The problem lies with the first condition attached to the sentence imposed.

[3] When this matter came before me on automatic review, a query was directed to the trial court requesting the magistrate to explain what is meant with the condition 'the accused does not commit the offence of malicious damage to property?'

[4] The magistrate conceded that the condition of suspension is wrongly worded and suggested that the condition be corrected to read: 'on condition the accused is not convicted of the offence of malicious damage to property committed within the period of suspension'.

[5] It is trite law that an essential requirement of a suspensive condition is that it must be formulated in such a manner that it does not cause future unfairness or injustice, nor must it be too wide or vague. ¹

[6] In this case, the wording of the first suspensive condition is vague and leads to an uncertainty and confusion. Thus the concession of the magistrate is correct and the suspensive sentence must be amended.

¹ *S v Damon* (CR 13/2022) [2022] NAHCMD 132 (24 March 2022).

[7] In the result, the following order is made:

a. The conviction is confirmed.

b. The sentence is altered to read as follows:

N\$ 3000 or six months' imprisonment wholly suspended for three years on condition:

(i) That the accused is not convicted of the offence of malicious damage to property committed within the period of suspension.

(ii) That the accused compensates the complainant Elwin Ui-Nuseb, the amount of N\$ 3000. The compensation to be paid off in installments of N\$ 1000 with effect from 21 April 2022 and thereafter on or before the 7th day of each subsequent month (N\$ 1000- 29 April 2022, N\$ 1000- 31 May 2022). Such compensation shall be paid at the Mariental Magistrate's Court, for the benefit of complainant Elwin Ui Nuseb.

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| N N SHIVUTE | H C JANUARY |
| Judge | Judge |