

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTIVES 61

Case Title: The State v Panduleni Amunyera	Case No: CR 110/2022
High Court MD Review No: 1384/2022	Division of Court: Main Division
Heard before: Usiku J et Claasen J	Delivered on: 17 October 2022
Neutral citation: <i>S v Amunyera</i> (CR 110/2022) [2022] NAHCMD 559 (17 October 2022)	
ORDER: 1. The conviction is confirmed; 2. The sentence is set aside and altered as follows: The accused is sentenced to a fine of N\$2000 or in default of payment, 4 months' imprisonment. The sentence is antedated to 08 July 2022.	

Reasons for order:

CLAASEN J (concurring USIKU J)

[1] This matter hails from the district court of Keetmanshoop and was referred to this court by way of automatic review in terms of s 302(1) of the Criminal Procedure Act of 1977 (the CPA).

[2] The accused was charged with three counts, namely, assault by threat, *crimen injuria*; and, malicious damage to property, respectively. He pleaded not guilty to counts 1 and 2, but guilty to count 3. Counts 1 and 2 were discharged in terms of s174 of the CPA as the state failed to prove a prima facie case in respect thereof. The accused was however convicted on count 3 in terms of s 112(1)(a) and sentenced to a fine of N\$2000.00 or in default of payment, 10 months' imprisonment.

[3] Upon receipt of the record, the two questions before were brought the court a quo, were about the conviction and the sentence. The magistrate responded and has satisfactorily laid the rest the issues that relate to the conviction. In the second question she was asked whether the term of imprisonment was appropriate for a matter finalised in terms of s 112(1)(a) of the CPA?

[4] The reply indicates that she was of the view that the sentence imposed was appropriate in the circumstances. She went on to give an elaborate explanation of her reasons for sentence. With respect, that explanation shows that the magistrate did not grasp the essence of the query on sentence. It was simply about the suitability of lengthy imprisonment terms for convictions under s 112(1)(a) of the CPA and there was no need to motivate the reasons for sentence again.

[5] The point of departure is that s112(1)(a) of the CPA is intended only for cases

that are considered minor, trivial or not serious,¹ and severe sentences are not suitable for convictions under the said provision.² The renowned special review of *S v Aniseb and another*³ is very informative in this regard. The *Aniseb* case laid out basic principles about the provision and inter alia reiterates the procedure that a court merely accepts a guilty plea by an undefended accused, without the need to question him or her, for the court to satisfy itself whether an offence was actually committed. Thus, an accused loses the protection that is built into the procedure of s 112(1)(b) of the CPA, but such accused is not exposed to any really serious form of punishment. (Our emphasis). In this context, it is our view that 10 months' imprisonment is a severe term of imprisonment and it is not appropriate for a conviction under s 112(1)(a) of the CPA, which provision the court a quo elected to utilize in this matter.

[6] On account of this irregularity, this court will adjust the sentence accordingly.

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

1. The conviction is confirmed;
2. The sentence is set aside and altered as follows:

The accused is sentenced to a fine of N\$2000 or in default of payment, 4 months' imprisonment. The sentence is antedated to 08 July 2022.

C M CLAASEN	D N USIKU
JUDGE	JUDGE

¹ *S v Plaatjie and Another* (CR58/2020) [2020] NAHCMD 362 (18 August 2020), para.7.

² *S v Nyuamba* (CR 31/2019)[2019] NAHCMD 97 (12 April 2019).

³ *S v Aniseb and another* 1991 NR 203 (HC).