

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTIVE 61

Case Title: The State v Herold Geingob	Case No: CR 137 /2022
High Court MD Review No: 2039 /2022	Division of Court: Main Division
Heard before: Hon Judge Shivute et Hon Judge Claasen	Delivered on: 08 December 2022
Neutral citation: <i>S v Geingob</i> (CR 137 /2022) [2022] NAHCMD 660 (8 December 2022)	
The order <ol style="list-style-type: none">1. The conviction in respect of contempt of court is confirmed.2. The sentence is set aside and substituted with a sentence of 45 days' imprisonment.3. The sentence is antedated to 15 November 2022.	
Reasons for order:	

CLAASEN J (concurring SHIVUTE J):

[1] The case record and a statement in terms of s 108 of the Magistrates' Court Act No 32 of 1944 (MCA) have been sent for review from the district court of Karibib.

[2] The accused has been convicted of contempt of court in *facie curiae* and sentenced to 6 months' direct imprisonment on 15 November 2022.

[3] This matter is reviewed without having obtain a statement from the magistrate as it will cause a delay which will be to the prejudice of the accused.

[4] The conviction came about as a result of the accused's disruptive behaviour whilst the court *a quo* was in session. Ordinarily this court may have regarded the explanations by the magistrate to the accused as insufficient or incomplete but in this case the court *a quo* was deprived of the opportunity to go through the full motions as a result of the accused's rowdy behaviour. Whilst the magistrate was reading a ruling on his recusal application and after asking him to listen and cautioning him to behave, the accused started shouting that he will not listen, and that he does not care if he is convicted for contempt. He stepped out of the dock and continued to walk out of the court whilst the magistrate was still speaking to him. In these circumstances the review court will confirm the conviction as in accordance with justice.

[5] However, the sentence is not in order, as it exceeds the parameters of the penalty clause. Section 108(1) of the MCA provides for a fine not exceeding N\$ 100 or three months' imprisonment or to such imprisonment without the option of a fine. Therefore, a term of 6 month's imprisonment cannot be permitted to stand and the review court will adjust the sentence to be in line with the penalty clause.

[6] The magistrate concerned is urged to have regard to the principles as set out in the numerous review judgments¹ on contempt of court in *facie curiae*, including the enabling legislation.

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

1. The conviction in respect of contempt of court is confirmed.
2. The sentence is set aside and substituted with a sentence of 45 days' imprisonment.
3. The sentence is antedated to 15 November 2022.

C M CLAASEN	N N SHIVUTE
JUDGE	JUDGE

¹*S v Pieters Abel* (CR 72/2006) delivered 11/08/2006, *S v L Samaria* Case No (P) 1760/2020 delivered 08/02/2011, *S v Amkheibeb* (CR 5/2013)[2013] NAHCMD 23 (30 January 2013), *S v Kuutondokwa* CR 210/2015)[2015] NAHCMD 33 (24 July 2015), *S v Iyambula* (CR 44/2018) [2018] NAHCMD 105 (2 October 2018), *S v Kandume* (CR 116/201) [2021] NAHCMD 558 (30 November 2021), *S v Ndawedwa*, (CR 23/2022)[2022] NAHCNLD 48 (28 April 2022).