

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT

Case Title: The State v Clarence Cedrick Gariseb	Case No: CR 135/2022
High Court MD Review No: 1917/2022	Division of Court: Main Division
Heard before: Judge January <i>et</i> Judge Usiku	Delivered on: 24 March 2023
Neutral citation: <i>S v Gariseb</i> (CR 135-2022) [2023] NAHCMD 139 (24 March 2023)	
The order: <ol style="list-style-type: none">1. Both convictions are confirmed.2. However the condition of suspension in the sentence in respect of count two is amended by inserting the words; 'committed during the period of suspension.3. The sentence in count 2 thus reads; the accused is sentenced to N\$1000 or 3 months' imprisonment wholly suspended for a period of 4 years on condition that the accused is not convicted of contravening section 71(1)(h) and (i) read with sections 1, 57, 71(2) and 72 of the Liquor Act 6 of 1998, committed during the period of suspension.	
Reasons for order:	
January J (concurring Usiku J)	

[1] The case was submitted from the Usakos Magistrate's Court for automatic review pursuant to s 302(1) of the Criminal Procedure Act 51 of 1977 (the CPA).

[2] The accused was charged with malicious damage to property and drunk and disorderly conduct in contravention of s 71(1)(h) and (i) read with sections 1, 57, 71(2) and 72 of the Liquor Act 6 of 1998.

[3] The accused pleaded not guilty to both counts. Evidence was presented and the accused was convicted on both charges. We have no qualms with the convictions. The accused was sentenced on count 1 to N\$3000 or 6 months' imprisonment of which N\$1000 or 3 months' is suspended for a period of 4 years on condition that the accused is not convicted of the crime of malicious damage to property, committed during the period of suspension. On count 2, he was sentenced to N\$1000 or 3 months' imprisonment wholly suspended for a period of 4 years on condition that the accused is not convicted of contravening s 71(1)(h) and (i) read with sections 1, 57, 71(2) and 72 of the Liquor Act 6 of 1998.

[4] A query was directed to the magistrate in the following terms:

'The magistrate must please explain with reference to case law whether or not the sentence on count two is a competent sentence where the condition, 'committed during the period of suspension', is omitted.'

[5] The magistrate, for reasons unknown to this court, simply ignored to respond to the directive to refer to case law. However, she responded that the omission was as a result of her mistake when typing the sentence and that her intention was to include the words 'committed during the period of suspension' as she did in the sentence on count 1. She accordingly concedes that the sentence needs to be corrected.'

[6] The concession made by the magistrate is correct. It, however needs to be re-

emphasised that magistrates have to proofread records submitted for review and even during proceedings to curb these types of unnecessary mistakes. Queries need to be responded to in accordance with the directives as requested.

[7] This court has on numerous occasions¹ in the past directed that it is imperative that the phrase '*committed during the period of suspension*' must be included when sentences are suspended. It is an imperative condition otherwise the sentence is incomplete.

'The oversight by the magistrate on the formulation of one of the conditions of suspension is elementary and should have been guarded against; more so where this court in the past has delivered a number of similar judgments in cases where the same mistake has repeatedly been made.'²

[8] In the result:

1. Both convictions are confirmed.
2. However the condition of suspension in the sentence in respect of count two is amended by inserting the words; '*committed during the period of suspension*'.
3. The sentence in count 2 thus reads; the accused is sentenced to N\$1000 or 3 months' imprisonment wholly suspended for a period of 4 years on condition that the accused is not convicted of contravening section 71(1)(h) and (i) read with sections 1, 57, 71(2) and 72 of the Liquor Act 6 of 1998, committed during the period of suspension.

¹ See: *S v Brandt* (CR 9/2014) [2014] NAHCMD 70 (4 March 2014); *State v Goagoseb* (CR 12/2016) [2016] NAHCMD 53 (03 March 2016); *State v Coleman* (CR 02/2016) [2016] NAHCMD 10 (27 January 2016); *S v Farmer* (CR 64/2014) [2014] NAHCMD 328 (5 November 2014); *S v Paula* (CR 19/2020) [2020] NAHCNLD 45 (20 April 2020); *S v Siua* (CR 21/2020) [2020] NAHCNLD 47 (20 April 2020).

² See: *State v Geinub* (CR 31/2016) [2016] NAHCMD 94 (06 April 2016).

<p>H C JANUARY JUDGE</p>	<p>D USIKU JUDGE</p>
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