

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTIVE 61

<b>Case Title:</b>  The State v Kenanzo Lionel Pietersen	<b>Case No:</b>  CR 58/2023
<b>High Court MD Review No:</b> 531/2023	<b>Division of Court:</b> High Court, Main Division
<b>Coram:</b> Liebenberg J <i>et</i> Shivute J	<b>Delivered:</b> 1 June 2023
<b>Neutral citation:</b> <i>S v Pietersen</i> (CR 58/2023) [2023] NAHCMD 272 (1 June 2023)	
<b>ORDER:</b>  <ol style="list-style-type: none"><li>1. The conviction is confirmed.</li><li>2. The sentence is set aside and substituted as follows:</li><li>3. N\$4500 (Four Thousand Five Hundred Namibia Dollars) or 12 months' imprisonment. The sentence is antedated to 9 March 2023.</li></ol>	

**REASONS FOR ORDERS:**

LIEBENBERG J (SHIVUTE J concurring):

[1] The accused was arraigned in the Magistrate's Court for the district of Walvis Bay on charges of theft of a cell phone. He pleaded guilty and was convicted on his plea of guilty and sentenced to N\$4500 or two years' imprisonment.

[2] The reviewing judge remarked that it is a well-established principle of our law that there must be a relation between the alternative sentence of imprisonment and the fine imposed. Accordingly, that in the instant case, this was not apparent.

[3] In her response, the magistrate gave lengthy reasons for the sentence she imposed and related to whether the fine imposed was appropriate. It would seem that the query was misunderstood for the reason that the query posed by this court turns on the ratio between the fine and alternative imprisonment, ie, that the alternative term of imprisonment is disproportionate to the fine imposed.

[4] The authorities in this regard are clear. In *S v Mynhardt; S v Kuinab*<sup>1</sup> general guidelines were given for the imposition of a fine and one of these principles is that the alternative term of imprisonment should be proportionate to the fine and the gravity of the offence. The accused was convicted for theft of a phone valued at N\$3599. It becomes apparent from the record that emphasis, for the sentence imposed, was premised on the offence being prevalent in the district. The trial court, in imposing sentence, remarked that it will not take the offence lightly and, what was even more aggravating is the fact that the stolen phone was not recovered.

[5] Though these factors are indeed relevant to sentence and of aggravating nature, it still does not explain the disproportionality between the fine and the alternative term of imprisonment. The court a quo clearly did not consider and apply the established guidelines and thus failed to exercise its discretion judiciously. The sentence as far as the

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<sup>1</sup> *S v Mynhardt; S v Kuinab* 1991 NR 336 (HC).

fine is concerned is justified but the alternative sentence of imprisonment is excessive. The sentence thus falls to be set aside and substituted with a more balanced sentence.

[6] In the result, it is ordered:

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

N\$4500 (Four Thousand Five Hundred Namibia Dollars) or 12 months' imprisonment.

The sentence is antedated to 9 March 2023.

**J C LIEBENBERG**  
**JUDGE**

**NN SHIVUTE**  
**JUDGE**