

REPUBLIC OF NAMIBIA

HIGH COURT OF
WINDHOEK



NAMIBIA MAIN DIVISION,

REVIEW JUDGMENT

PRACTICE DIRECTION 61

Case Title: <i>The State</i> v <i>Wilbard Katuta</i>	Case No: CR 78/2023
	Division of Court: Main Division
Heard before: Christiaan AJ <i>et</i> Shivute J	Delivered on: 20 July 2023
Neutral citation: <i>S v Katuta</i> (CR 78/2023) [2023] NAHCMD 416 (20 July 2023)	
The order: 1. The conviction is confirmed. 2. The sentence is amended to read; The accused is sentenced to a fine of N\$ 2000 (two thousand) or 3 (three) months' imprisonment which is wholly suspended for a period of 3 (three) years' on condition that the accused is not convicted of contravening section 6 of Ordinance 12 of 1956 (Possession of suspected stolen property), committed during the period of suspension. 3. The sentence is antedated to 11 May 2023.	
Reasons for order:	

CHRISTIAAN AJ (SHIVUTE J concurring):

[1] The accused appeared in the Magistrate's Court in the district of Grootfontein on a charge of possession of suspected stolen property. The accused was convicted of the offence charged and sentenced as follows;

'A fine of N\$2000 (Two thousand Namibian Dollars) in default to 3 (three) months imprisonment which is wholly suspended for 3(three) years on condition accused is not convicted of theft committed during the period of suspension.'

[2] The accused person was correctly convicted. The problem lies with the 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 why the condition of suspension states that the accused should not be convicted of the offence of theft, if the accused was charged and convicted of the offence of possession of suspected stolen 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 possession of suspected stolen properties 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 vague¹. The reason for the required unequivocal formulation of a suspensive condition is because the non-compliance with a condition of a suspended sentence has grave consequences for an accused. The primary object is, after all, that the accused must understand what he or she has to do or avoid in order to ensure that

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

the sentence is not put into operation and, if the condition of suspension is too wide, it is bound to lead to uncertainty and misinterpretation.²

[6] In this case, the wording of the suspensive condition is vague and may lead to future unfairness or injustice. Thus the concession of the magistrate is correct and the suspensive sentence must be amended.

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

1. The conviction is confirmed.

2. The sentence is amended to read; The accused is sentenced to a fine of N\$ 2000 (two thousand) or 3 (three) months' imprisonment which is wholly suspended for a period of 3 (three) years' on condition that the accused is not convicted of contravening section 6 of Ordinance 12 of 1956 (Possession of suspected stolen property), committed during the period of suspension.

3. The sentence is antedated to 11 May 2023.

P CHRISTIAAN Acting Judge	N N SHIVUTE Judge

² *S v Simon* 1991 NR 104 (HC); *Hiemstra's Criminal Procedure*, Issue 2 July (2009) at 28-79 to 28-80.