

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTIVE 61

Case Title: The State v Kamutuuu Kanduumombe	Case No: CR 83/2023
High Court MD Review No: 1094/2023	Division of Court: High Court, Main Division
Coram: Liebenberg J <i>et</i> Shivute J	Delivered: 27 July 2023
Neutral citation: <i>S v Kanduumombe</i> (CR 83/2023) [2023] NAHCMD 446 (27 July 2023)	
ORDER: <ol style="list-style-type: none">1. The conviction is confirmed.2. The sentence is confirmed but amended to read: N\$4000 (Four Thousand Namibia Dollars) or in default of payment, 24 (Twenty four) months' imprisonment of which N\$1000 (One Thousand Namibia Dollars) or 12 (Twelve) months' imprisonment is suspended for a period of five (5) years on	

condition that the accused is not convicted of the offence of assault with intent to do grievous bodily harm, committed during the period of suspension.

REASONS:

LIEBENBERG J (SHIVUTE J concurring):

[1] Before court is a review matter stemming from the magistrate's court for the district of Okakarara where the accused was arraigned on one count for assault with intent to cause grievous bodily harm. After evidence was led, accused was convicted and sentenced to 'N\$4000 (Four Thousand Namibia Dollars) and in default of payment 24(Twenty four) months' imprisonment whereby N\$1000 (One Thousand Namibia Dollars) and 12 (Twelve) months' imprisonment is suspended for a period of five (5) years on condition that the accused is not convicted of the offence of assault with intent to do grievous bodily harm during the period of suspension.'

[2] On review, the court queried the omission of the word 'committed' as a condition of suspension. In her response, the magistrate indicates that the omitted part of the sentence has now been rectified but this is not evident from the record. However, the sentence as reflected on the cover sheet still does not contain the word 'committed' as a condition of suspension of the sentence, nor does the record.

[3] The inclusion of the word 'committed' as a condition of suspension plays a vital role¹ in that it informs the accused of the period, in future, within which s/he must not be convicted of the prohibited offence committed during the period of suspension. The condition of suspension in the present matter thus stands to be corrected.

[4] In addition, the formulation of the sentence is ambiguous and needs to be corrected.

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

¹ *S v Mbathera* (CR 54/2019) [2019] NAHCMD 291 (15 August 2019).

1. The conviction is confirmed.
2. The sentence is confirmed but amended to read:
N\$4000 (Four Thousand Namibia Dollars) or in default of payment, 24(Twenty four) months' imprisonment of which N\$1000 (One Thousand Namibia Dollars) or 12 (Twelve) months' imprisonment is suspended for a period of five (5) years on condition that the accused is not convicted of the offence of assault with intent to do grievous bodily harm, committed during the period of suspension.

J C LIEBENBERG
JUDGE

NN SHIVUTE
JUDGE