

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

PRACTICE DIRECTION 61

Case Title: The State v Alfred Mushuku Sinyepe	Case No: CR 41/2024
High Court MD Review No: 371/2024	Division of Court: High Court, Main Division
Coram: Shivute J <i>et</i> Christiaan J	Delivered: 17 May 2024
Neutral citation: <i>S v Sinyepe</i> (CR 41/2024) [2024] NAHCMD 236 (17 May 2024)	
ORDER: a) The conviction and sentence in count 1, is confirmed but the sentence is amended to read: Five (5) years' imprisonment of which two (2) years are suspended for a period of five years on condition that accused is not convicted of assault with intent to do grievous bodily harm read with the provisions of the Combating of Domestic Violence Act, 4 of 2003 committed during the period of suspension.	

b) The conviction and sentence in count 2 are confirmed but the sentence is amended to read:

Twelve (12) months' imprisonment, to run concurrently with the sentence in count 1.

REASONS FOR ORDERS:

CHRISTIAAN J (SHIVUTE J concurring):

[1] This is a review submitted from the magistrate's court of Katima Mulilo where the accused was arraigned on two counts, to wit: Assault with intent to do grievous bodily harm and malicious damage to property, both read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

[2] The accused pleaded guilty and was sentenced as follows:

' Count 1: Five (5) years' imprisonment of which two (2) years' imprisonment is suspended for a period of five years on condition that accused is not convicted of assault grievous bodily harm read with the provisions of the Combating of Domestic Violence Act 4 of 2003 committed during the period of suspension. Further, the accused must be examined and treated by a mental health specialist for any mental illness found especially in order to address this hostile views and feelings the accused hold against the complainant.

Count 2: Twelve (12) months' imprisonment.'

[3] When the matter came on review, the magistrate was asked to explain why the additional order in respect of count 1¹ was made in the absence of a proper (substantiated and firm) basis.

[4] In response to the first query, the magistrate indicates that he is not aware that firm and substantial reasons were required. He asks that the additional order be struck out. The assertion is correctly made and the additional order will be set aside considering that the order was not competent when regard is had to the provisions of s 77, 78 and 79

¹ The review query erroneously reads 'count 2' but it should be 'count 1' as that is the only count with an additional order.

of the Criminal Procedure Act 51 of 1977, as amended ('the CPA').

[5] As regards the query whether the court a quo considered the provisions of s 280 of the CPA for purposes of sentencing, the response is in the negative for the reason that the magistrate is of the view that the accused was convicted of two separate offences and thus, s 280 finds no application. It is without a doubt that the accused was indeed sentenced for two separate offences. The qualm this court had is that the charge sheet attached to the record did not bear the order that the sentence in count 2 should run concurrently with that in count 1 as appears on the original charge sheet which the review court did not have sight of. The second query thus no longer finds application as upon closer scrutiny, it became evident that it is only the review cover sheet which does not order that the sentences run concurrently. This will be corrected.

[6] The conviction and sentence in both counts will be confirmed but the sentence stands to be corrected.

[7] In the result, it is ordered:

- a) The conviction and sentence in count 1, is confirmed but sentence is amended to read:

Five (5) years' imprisonment of which two (2) years are suspended for a period of five years on condition that accused is not convicted of assault with intent to do grievous bodily harm read with the provisions of the Combating of Domestic Violence Act, 4 of 2003 committed during the period of suspension.

- b) The conviction and sentence in count 2 are confirmed but the sentence is amended to read:

Twelve (12) months' imprisonment, to run concurrently with the sentence in count 1.

**P CHRISTIAAN
JUDGE**

**N N SHIVUTE
JUDGE**

