

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI
REVIEW JUDGMENT

Case No: CR 10/2017

In the matter between:

THE STATE

and

TUHAFENI KAKWELEDI TUHAFENI

ACCUSED

HIGH COURT NLD REVIEW CASE REF NO: **228/2017**

Neutral citation: *S v Tuhafeni* (CR 10/2017) [2017] NAHCNLD 74 (2 August 2017)

Coram: TOMMASI J and JANUARY J

Delivered: 2 August 2017

Flynote: Review – Sentence – Housebreaking with intent to steal and theft – Sentence partly suspended on condition that the accused is not convicted for theft only – The condition of a conviction for theft unjustifiably narrows the scope and purpose of suspending part of the sentence – Sentence corrected.

Summary: The accused was convicted of Housebreaking with intent to steal and theft. He was sentenced to 4 years' imprisonment of which two years are suspended for a period of three years on condition that the accused is not convicted of theft, committed

during the period of suspension. The limited condition of a conviction of theft only is not in accordance with justice in the circumstances. The condition for suspension is corrected to extent that it includes housebreaking.

ORDER

1. The sentence is corrected to read;
 2. The accused is sentenced to 4 (four) years' imprisonment of which 2 (two) years are suspended for a period of 3 (three) years on condition that the accused is not convicted of Housebreaking with the intent to steal and theft, committed during the period of suspension.
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JUDGMENT

JANUARY J (TOMMASI J concurring)

[1] This case is before me on automatic review.

[2] The accused was convicted for housebreaking with intent to steal and theft. The conviction is confirmed. He was sentenced to four years' imprisonment of which two years' are suspended for three years on condition that the accused is not convicted of theft, committed during the period of suspension.

[3] It is not clear why the learned magistrate limited the condition of suspension to theft only. I have not sent a query to the magistrate because in my view the limitation is not in accordance with justice and furthermore may be confusing to the accused. The accused may be under the impression that he may commit further housebreakings and as long as he does not steal, the suspended portion will not be put into operation. In my view, that is in effect what this sentence means. Furthermore, 'any condition must be in

relation to the crime of which the accused was convicted of. Whether a condition is sufficiently related is a matter of logic and equity.’¹

[4] The purpose of a suspended sentence and a partially suspended sentence is for individual deterrence. Secondly it has a mitigating effect especially on young offenders as in this case where the accused was 18 years old at the time of the commission of the crime. Thirdly, it has a limited rehabilitative purpose in that the offender will experience the hard ship of prison but the court, being merciful in suspending part of the sentence, intends this action to rehabilitate the offender. The suspended portion will hang over his head like the sword of Damocles and may further deter the accused from committing further crimes.²

[5] In my view, the sentence stands to be corrected to include housebreaking as part of the condition of suspension.

[6] In the result.

1. The sentence is corrected to read;
2. The accused is sentenced to 4 (four) years’ imprisonment of which 2 (two) years are suspended for a period of 3 (three) years on condition that the accused is not convicted of Housebreaking with the intent to steal and theft, committed during the period of suspension.

H C JANUARY
JUDGE

M A TOMMASI
JUDGE

¹ SS Terblanche *Guide to Sentencing in South Africa*, 2 Ed (2007) p358 to p362.

² SS Terblanche *Guide to Sentencing in South Africa*, 2 Ed (2007) p351 para 2.4.4 to p353 para 2.4.4.4.