

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

<b>Case Title:</b> <i>The State v Lukas Stephanus Weyulu</i>	<b>Case No:</b> CR 38/2019
	<b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Mr. Justice January J <i>et</i> Honourable Ms. Justice Salionga J	<b>Delivered on:</b> 4 November 2019
<b>Neutral citation:</b> <i>S v Weyulu</i> (CR 38/2019) [2019] NAHCNLD 125 (4 November 2019)	
<b>The order:</b> <ol style="list-style-type: none"><li>1. The conviction of assault with intent to do grievous bodily harm read with the provisions of section 21 of the Combating of Domestic Violence is confirmed;</li><li>2. The sentence of 5 years imprisonment is set aside;</li><li>3. The accused is sentenced to 48 months imprisonment, 12 months of which are suspended for 5 years on condition the accused is not convicted assault or assault with intent to do grievous bodily harm committed during the period of suspension;</li><li>4. The sentence is backdated to 16 September 2019.</li></ol>	
<b>Reasons for order:</b>	

JANUARY J (SALIONGA J concurring):

1. The accused pleaded guilty to the crime.
2. Although the accused assaulted his biological mother with a knobkerrie causing her to sustain an open wound on the forehead and a fractured arm, this is not the only consideration in sentencing.
3. The mother had to spend a month and 2 weeks in hospital.
4. The accused is a first offender of 25 years of age. He is not married and has no children. He never went to school. He did casual work as a brick maker where he earned about N\$600 per month.
5. The magistrate emphasized the prevalence of the offence, found it aggravating that accused assaulted his biological mother, showed no remorse and sentenced him to the maximum of 5 years' direct imprisonment. The mother testified and requested for a custodial sentence.
6. I agree that the case calls for a custodial sentence.
7. However what is shocking in this matter, is the fact that that the learned magistrate imposed the five years' imprisonment which is the full force and extent of the magistrate's jurisdiction for a first offender who had pleaded guilty.
8. It is not a sentence this court would have imposed had it sat as a court of first instance.

H C JANUARY JUDGE	J T SALIONGA JUDGE