

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

Case Title: <i>S v Andreas Negongo</i>	CR NO.: 10/2020 Case No.: A131/2015
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J <i>et</i> Honourable Ms. Justice Salionga J	Delivered on: 4 February 2020
Neutral citation: <i>S v Negongo</i> (CR 10/2019) [2020] NAHCNLD 19 (4 February 2020)	
IT IS ORDERED THAT: <ol style="list-style-type: none">1. The conviction is confirmed;2. The sentence is set aside;3. The accused is sentenced to N\$ 5000 or two years' imprisonment in default of payment of which N\$ 2000 or six months imprisonment are suspended for a period of five years on condition that the accused is not convicted of assault with intent to do grievous bodily harm or assault common committed during the period of suspension.	

Reasons for the above order:

SALIONGA J (JANAURY J concurring):

[1] The accused was convicted of assault with intent to do grievous bodily harm in the Eenhana magistrate's court and was sentenced. On perusing the record it is apparent that two different sentences were imposed in this matter. According to the review sheets and J15 attached the sentence of N\$ 5000 or two years in default of payment of which N\$2000 or six months are suspended for a period of five years was imposed. Whereas on page 26 of the transcripts, the accused was sentenced to N\$5000 or two years in default of payment of which two years were suspended for a period of five years on condition that the accused is not convicted of assault committed during the period of suspension.

[2] The sentences imposed by the trial magistrate do not make sense and are misleading. It is not known what happens to the accused person in the event he is unable to pay a fine if the sentence as per the transcript is correct. Again if the sentence on the review sheet and J15 is taken as the correct sentence then the condition of suspended sentence is incomplete because it only indicates two years in default and further it omits the word committed. It was stated in *S v Haufiku* 2007 (1) NR 94 (HC) that the word "committed" should be part of the condition.

[3] This court has on numerous cases pronounced itself that magistrates should take more care when formulating conditions attached to suspended sentences¹.

[4] Consequently the sentences imposed by a trial magistrate are set aside and in terms of section 304(2) (iv) of the Criminal Procedure Act, Act 51 of 1977 this court imposes a sentence as the magistrate's court ought to have imposed.

[5] In the result it is ordered that:

1. The conviction is confirmed;
2. The sentence is set aside;

¹ *S v Louw & another* 1999 11 (HC)

3. The accused is sentenced to N\$ 5000 or two years imprisonment in default of payment of which N\$ 2000 or six months imprisonment are suspended for a period of five years on condition that the accused is not convicted of assault with intent to do grievous bodily harm or assault committed during the period of suspension.

JT SALIONGA
JUDGE

HC JANUARY
JUDGE