**REPUBLIC OF NAMIBIA**

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

**REVIEW JUDGMENT**

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| **Case Title:***The State v Nahenda Samuel* | **CR No**.: 12/2020Case No.: 452/2017 |
| **Division of Court:** Northern Local Division |
| **Heard before:** Honourable Mr Justice January J *et*Honourable Mrs Justice Salionga J | **Delivered on:** 10 February 2020 |
| **Neutral citation:** *S v Samuel* (CR 12/2020) [2020] NAHCNLD 22 (10 February 2020) |
| **The order:** 1. The conviction of negligent discharge in contravention of section 38(1) (*l*) read with sections 1, 38 and 39 of Act 7 of 1996 as amended is confirmed;
2. The conviction of possession of a fire arm without a license in contravention of section 2 read with sections 1, 38 and 39 is confirmed;
3. The sentence of N$3000 or 12 months imprisonment of which N$1500 or six months imprisonment is suspended for five years is confirmed but amended to read in addition on condition that the accused is not convicted for a contravention of section 38(1) (*l*) of Act 6 of 1997 committed during the period of suspension;
4. The sentence of N$2000 or ten months imprisonment of which N$1000 or five months imprisonment is suspended for a period of five years is confirmed but amended in addition to read on condition that accused is not convicted for a contravention of section 2 of Act 6 of 1997 committed during the period of suspension*.*
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| **Reasons for the order:** |
| JANUARY J (SALIONGA J concurring):[1] The sentences imposed in both counts were suspended without any conditions attached.[2] This court has on numerous occasions in the past directed that it is imperative that the words ‘committed during the period of suspension’ must be included when sentences are suspended.[[1]](#footnote-1) ‘The oversight by the magistrate on the formulation of one of the conditions of suspension is elementary and should have been guarded against; more so where this court in the past has delivered a number of similar judgments in cases where the same mistake has repeatedly been made.’ |
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|  H C JANUARY  JUDGE  |  J T SALIONGA JUDGE |

1. See: *State v Geinub* (CR 31/2016) [2016] NAHCMD 94 (06 April 2016) [↑](#footnote-ref-1)