

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

Case Title: The State v <i>Nailenge Thomas Michael</i>	CR No.: 03/2020 Case No.: 445/2019
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice January J et Honourable Ms. Justice Salionga J	Delivered on: 15 January 2020
Neutral citation: <i>S v Michael</i> (CR 03/2020) [2020] NAHCNLD 03 (15 January 2020)	
The order: <ol style="list-style-type: none">1. The conviction of theft by false pretences is confirmed.2. The sentence of a fine of N\$2000 or 18 months' imprisonment wholly suspended for a period of four (4) years on condition that accused is not convicted of a similar offence is corrected to read; A fine of N\$2000 or 18 months imprisonment wholly suspended for a period of four (4) years on condition that accused is not convicted of theft by false pretences or theft committed within the period of suspension.	

Reasons for order:

JANUARY J (SALIONGA AJ concurring):

[1] This court has in numerous cases disapproved and pronounced itself that magistrates should not suspend sentences on condition that an accused should not commit 'a similar or similar offences.'

[2] The condition of suspension is too wide and is bound to lead to uncertainty and misinterpretation. (See: *S v Simon* 1991 NR 104 (HC); *Hiemstra's Criminal Procedure*, Issue 2 at 28-79 to 28-80). Conditions must be clear: Commentary on section 297 of the Criminal Procedure Act).

[3] The conditions must be clear and must refer to one or more specific offences, not to a group of offences. (See: *Hiemstra's Criminal Procedure*, Issue 2 at 28-79: Commentary on section 297 of the Criminal Procedure Act).

H C JANUARY JUDGE	J T SALIONGA JUDGE