

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

Case Title: <i>The State v Salatiel Mushima & Juuso Amupala</i>	CR No.: 37/2020 Case No: EENHANA A132/2019
	Division of Court: Northern Local Division
Heard before: Honourable Mr Justice January J <i>et</i> Honourable Ms Justice Diergaardt AJ	Delivered on: 26 June 2020
Neutral citation: <i>S v Mushima</i> (CR 37/2020) [2020] NAHCNLD 76 (26 June 2020)	
The order: <ol style="list-style-type: none">1. The convictions of housebreaking with intent to steal and theft is confirmed in relation to both charges 1 and 2;2. The conviction for malicious damage to property is confirmed;3. The sentences of: "Count 1 and 2-5 years each" as reflecting on the review cover sheet and J15 charge sheet are set aside and corrected to read; Both counts are taken together for purposes of sentence. Accused are each sentenced to 5 years imprisonment;	

4. The sentence for malicious damage to property of “N\$1000 or 3 months in default of payment the sentence of 3 months to run concurrently with the 5 years imprisonment” is set aside and corrected to reflect: Both accused are sentenced to N\$1000 or 3 months imprisonment. In default of payment, the 3 months imprisonment are to be served concurrently with the 5 years imprisonment.
5. The sentence; “Taking into account the three crimes committed to three complainants taken together for purpose of sentence is of 5 years i.e. count 1 and 2 direct imprisonment each. On count 3 accused sentence N\$1000 Or 3 months imprisonment, if fine not paid the 3 months to run concurrently with imprisonment” as reflecting in the reasons for sentence is set aside.

Reasons for the order

JANUARY J (DIERGAARDT AJ concurring):

[1] When this matter came before me for automatic review, I directed a query to the magistrate as follows:

1. “The sentence is not at all clear. The review cover sheet and typed J15 charge sheet reflect: ‘Count 1 and 2 – 5 years imprisonment (handwritten) each.’ It could be interpreted that the accused are sentenced to 10 years effective imprisonment on count 1 and 2.
2. Likewise, the sentence in the record of proceedings is also not clear. It reflects: ‘Taking into account the three crimes committed taken together for purpose of sentence is of 5 years i.e. count 1 and 2 direct imprisonment each.’ Thereafter the sentence on count 3 follows.
3. The phrasing of this last-mentioned sentence could be interpreted that the accused are sentenced twice on count 3. All three crimes are taken together for purpose of sentence but thereafter the accused are separately sentenced on count 3. This is confusing and nonsensical.
4. The magistrate must please clarify.”

[2] The magistrate responded:

“On count 1 and 2; Accused 1 and accused 2 sentence (sic) to 5 years imprisonment each and both counts taken together. On count 3; Accused 1 and 2 sentenced to N\$1000 or three months each. As it pleases the Reviewing judge.”

[3] The sentences are confusing, nonsensical and open to different interpretations as highlighted in the query above.

Judge(s) signature	Comments:
January J	
Diergaardt AJ	