

REPUBLIC OF NAMIBIA



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

REVIEW JUDGMENT

<p>Case Title: <i>The State v Isack Kandjimi, and</i> <i>The State v Petrus F. Karupeteka</i></p>	<p>CR No.: 28/2021 Review No.: 456/2021 Review No.: 455/2021</p>
<p>Heard before: Honourable Ms. Justice Usiku, J <i>et</i> Honourable Ms. Justice Salionga, J</p>	<p>Division of Court: Windhoek, Main Division Delivered on: 23 April 2021</p>
<p>Neutral citation: <i>S v Kandjimi and S v Karupeteka</i> (CR 28/2021) [2021] NAHMD 184 (23 April 2021)</p>	
<p>The order:</p> <ol style="list-style-type: none">1. The convictions in all two matters are in accordance with justice, and therefore, are confirmed.2. The sentences are set aside and substituted with the following sentences.	

3. In respect of case number RND-CRM-1614/2019, the accused is sentenced to 12 months imprisonment of which 4 months are suspended for a period of 3 years on condition that the accused is not convicted of the same offence of assault on a member of the Police committed during the period of suspension.
4. In respect of case number RND-CRM-2372/2020, the accused is sentenced to 3 years imprisonment of which 12 months are suspended for a period of 3 years on condition that the accused is not convicted of the offence of assault with the intent to do grievous bodily harm, committed during the period of suspension.
5. The sentences are ante dated to 16 February 2021 in case number RND-CRM-1614/2019 and 12 February 2021 in respect of RND-CRM-2372/2020.

Reasons for the order

Usiku, J (Salionga, J concurring):

[1] The accused persons appeared before the Magistrate's Court at Rundu. Mr. Kandjimi appeared on a charge of contravening section 35(1) read with section 1 and 13 of the Police Act, Act 19 of 1990 assaulting a member of the police. Mr. Kandjimi pleaded not guilty to the charge, after evidence was led, he was found guilty of having committed the offence as charged by the learned Magistrate. He was sentenced to a fine of N\$4000-00 four thousand Namibian dollars or alternatively if unable to pay the fine to a sentence of twelve months imprisonment.

[2] Mr. Karupeteka pleaded guilty to one charge of Assault with the intent to do grievous bodily harm read with the provisions of the Domestic Violence Act, Act 4 of 2003. He pleaded guilty, and was questioned in terms of section 112 (1) (b) of Act 51 of 1977, he was found guilty as charged and convicted where after he was sentenced to a fine of N\$ 6000-00 six

thousand Namibian dollars or alternatively if unable to pay the fine to a sentence of three years imprisonment.

[3] When the matters came before me for review I questioned the learned Magistrate whether the sentences imposed in the respective cases were not too severe taking into account that both accused were first time offenders. Further that Mr. Karupeteka pleaded guilty to the charge and the record reflected that the state recommended a wholly suspended sentence on condition he performed community service as he suffers from epilepsy and that this sickness could have disadvantaged the accused person.

[4] The learned magistrate responded to my query citing the prevalence of the offences and their seriousness. The learned Magistrate in the case of Mr. Karupeteka emphasised in a lengthy reply the seriousness of the offence and the interests of society in his case. The learned Magistrate emphasised the possible serious damage the complainant could have suffered at the hands of Mr. Karupeteka as he pounded the complainant with a sharp stick. The learned Magistrate in the case of Mr. Karupeteka conceded that if the sentence imposed by her induces the sense of shock, she requested that it be substituted with one that is in the interest of justice.

[5] It must be noted that the accused persons in both cases were first time offenders, who would benefit from sentences that are reformatory in nature. A suspended sentence in both instances could have served to be beneficial in the long run as they would act as deterrent in nature, especially offences relating to the Domestic Violence Act, Act 4 of 2003 due to the domestic element posed to any future intended conduct.

[6] In my view the approach that imprisonment ought not to be lightly imposed, especially if the objects of punishment can be met by another form of punishment is a healthy one. It is therefore important not to lose sight of an accused person's personal circumstances when it comes to the determination of punishment.

[7] The over-emphasis of society's interest at the cost of the accused's personal

circumstances must be guarded against, taking other factors into account. Thus in the case of *Quandu v State*¹ the court held that the seriousness of the offence (also the increasing prevalence thereof) is for the purpose of sentence weighed against the personal circumstances of the accused. An over emphasis of the seriousness of the offence can justify the inference that the trial court exercised its discretion in an improper or unreasonable manner warranting this court to intervene.

[8] It is clear that the learned Magistrate over emphasised the seriousness of the offences and its prevalence in her jurisdiction at the expense of the accused persons personal circumstances.

[9] It is my considered view that the convictions in all two cases appear to be in accordance with justice. However the sentences imposed are severe under the circumstances warranting the court to intervene. The sentences imposed cannot be allowed to stand undisturbed.

[10] In the result, I make the following order:

1. The convictions in all two matters are in accordance with justice, therefore, are confirmed.
2. The sentences are set aside and substituted with the following sentences.
3. In respect of case number RND-CRM-1614/2019, the accused is sentenced to 12 months imprisonment of which 4 months are suspended for a period of 3 years on condition that the accused is not convicted of the same offence of assault on a member of the Police committed during the period of suspension.
4. In respect of case number RND-CRM-2372/2020, the accused is sentenced to 3 years imprisonment of which 12 months are suspended for a period of 3 years on condition

¹ *Quandu v State* 1989 (1) SA at 517 (A).

that the accused is not convicted of the offence of assault with the intent to do grievous bodily harm, committed during the period of suspension.

5. The sentences are ante dated to 16 February 2021 in case number RND-CRM-1614/2019 and 12 February 2021 in respect of RND-CRM-2372/2020.

Judge(s) signature	Judge(s) signature
D.N Usiku, J:	J. T SALIONGA J: