

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

REVIEW JUDGMENT

Case Title: <i>The State versus Lineekela Isack</i>	CR NO: 14 /2020 MAGISTRATE SERIAL NO:160/2018
Heard before: Honourable Ms Justice Salionga J et Honourable Mr Justice Munsu AJ	Division of Court: Northern Local Division Delivered on: 10 May 2021
Neutral citation: <i>S v Isack</i> (CR14/2020) [2021] NAHCNLD 44 (10 May 2021)	
IT IS ORDERED THAT: 1. The convictions are confirmed. 2. The sentences on count 2 and 4 are confirmed but the condition of suspension on count 4 is substituted by the following condition: Accused is sentenced to N\$ 3000 or 12 months imprisonment wholly suspended for a period of five (5) years on condition accused is not convicted of a crime of contravening section 33 of Act 7 of 1996 committed during the period of suspension.	

Reasons for the above order:

SALIONGA J (MUNSU AJ concurring):

[1] The accused was convicted of possession of firearm without a license and possession of ammunition in contravening section 33 of Act 7 of 1997. He was sentenced a follows to count 1 N\$ 3000 or 12 months imprisonment and on count 2 to N\$ 3000 or 12 months imprisonment wholly suspended for a period of five (5) years on condition accused is not convicted of contravening my (sic) provision of Act 7 of 1996 committed during the period of suspension.

[2] In this matter it is the formulation of the condition of the suspended sentence that the reviewing judge has a qualm with. A condition of suspension that the accused is not convicted of contravening my (sic) provision of Act 7 of 1996 which I understand to mean any provisions is too wide as it refers to a group of offences. Section 297 of the Act 51 of 1977 provides that the condition must be clear and must refer only to offences which are substantially related to the nature and circumstances of the offence of which the accused has been convicted.

[3] Act 7 of 1996 in my view creates various offences some of which are not relating to a contravention in question. The condition of suspension must be framed in such a manner that it enables the accused to know what conduct is prohibited before the suspended sentence is put into operation. Therefore a condition which is too wide has to be substituted.

[4] Consequently the following orders are made:

1. The conviction is confirmed;
2. The sentences on count 2 and 4 are confirmed but the condition of suspension on count 4 is substituted by the following condition: Accused is sentenced to N\$ 3000 or 12 months imprisonment wholly suspended for a period of five (5) years on condition accused is not convicted of a crime of contravening section 33 of

Act 7 of 1996 committed during the period of suspension.	
J T SALIONGA JUDGE	D C MUNSU ACTING JUDGE