

REPUBLIC OF NAMIBIA



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

Case Title: <i>S v Kapuwo Mashuna</i> <i>S v Mupopya Albertina</i>	CR NO: 6/2021 CASE NO :162/2020 and 166/2020
	Division of Court: Northern Local Division
Heard before: Honourable Ms. Justice Salionga J et Honourable Mr Justice Munzu AJ	Delivered on: 29 January 2021
Neutral citation: <i>S v Mashuna; S Mupopya</i> (CR 6/2021) [2021] NAHCNLD 07(29 January 2021)	
IT IS ORDERED THAT: <ol style="list-style-type: none">1. The convictions in both matters are confirmed.2. The sentences in both matters are confirmed but the conditions of suspension are amended as follows: <u>In respect of case number 162/ 2020</u> a) The accused is sentenced to N\$2000 or (12) months imprisonment of which N\$ 1000 or six (6) months is suspended for 3 years on condition accused is not convicted of assault with intent to do grievous bodily harm <u>committed</u> during the period of suspension.	

In case number 166/ 2020

b) A fine of N\$3000 or Twelve (12) months direct imprisonment of which N\$1500 or six (6) months are suspended for a period of 2 years on condition that the accused is not convicted of contravening section 30(3) of the Immigration and Control Act, Act 7 of 1993- Employing a person in Namibia in contravening of the Act committed during the period of suspension.

Reasons for the above order:

SALIONGA J (MUNSU AJ concurring):

[1] Both matters came before me on automatic review, emanating from the Magistrate's Court Oshakati and were heard by the same magistrate.

[2] The accused in case no 162/2020 was convicted of assault with intent to do grievous bodily harm and sentenced to N\$2000 or (12) months imprisonment of which N\$ 1000 or six (6) months is suspended for 3 years on condition accused is not convicted of a crime of assault with intent to do grievous bodily harm during the period pf suspension.

[3] Accused in case no 166/2020 was convicted of contravening section 30(3) of the Immigration Control Act, Act 7 of 1993 -- Employing a person in Namibia in contravening section 30 (3) of the Act and sentenced to N\$3000 or Twelve (12) months direct imprisonment of which N1500 or six (6) months are suspended for a period of 2 years on condition that the accused is not convicted of contravening section 30(3) of the Immigration and Control Act, Act 7 of 1993- Employing a person in Namibia in contravening of the Act during the period of suspension.

[4] The law is clearly stated in the *Hiemstra's Criminal Procedure Commentary* page 28-81 Issue 2 that 'the condition is aimed at restraining the accused by means of the threat of

implementation of the suspended punishment from committing certain acts during a particular period. Further that it is the conduct during the period which is important not the ultimate finding that the individual committed the prohibited act. For that reason conditions of suspension are worded in such a manner that it is the commission of the particular offence that can precipitate implementation not a conviction for that offence within the period.'

[5] Therefore where a magistrate imposes a suspended sentence, the word 'committed' should be used before the words 'during the period of suspension.' The condition of suspension that omits the word committed should be corrected.

[6] In the result the following orders are made:

1. The convictions in both matters are confirmed
2. The sentences in both matters are confirmed but the conditions of suspension are amended as follows:

In respect of case number 162/2020

a); The accused is sentenced to N\$2000 or (12) months imprisonment of which N\$ 1000 or six (6) months is suspended for 3 years on condition accused is not convicted of assault with intent to do grievous bodily harm committed during the period of suspension.

In case number 166/2020

b) A fine of N\$3000 or Twelve (12) months direct imprisonment of which N\$1500 or six (6) months are suspended for a period of 2 years on condition that the accused is not convicted of contravening section 30(3) of the Immigration and Control Act, Act 7 of 1993- Employing a person in Namibia in contravening of the Act committed during the period of suspension.

J.T. SALIONGA JUDGE	D C MUNSU ACTING JUDGE

