

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

REVIEW JUDGEMENT

Case Title: The State v Domingos Antonio	CR No.: 20/2022 Case No.: Outapi B350/2021
	Division of Court: Northern Local Division
Heard before: SALIONGA J <i>et</i> MUNSU AJ	Delivered on: 19 April 2022
Neutral citation: <i>S v Antonio</i> (CR 20/2022) [2022] NAHCNLD 42 (19 April 2022)	
The order: <ol style="list-style-type: none">1. The conviction is confirmed2. The sentence is amended to read as follows: A fine of N\$ 2000.00 or 6 months imprisonment of which N\$ 1000.00 or 3 months is suspended for a period of five years on condition that the accused is not convicted of contravening section 34(3) of the Immigration Control Act 7 of 1993: Failure to present himself to an immigration officer, committed during the period of suspension.	
Reasons for the order	
MUNSU, AJ (SALIONGA J concurring): [1] This matter came before me on automatic review in terms of section 302 of the Criminal Procedure Act 51 of 1977 (CPA). [2] The accused was arraigned on a charge of contravening section 34(3) read with sections	

1 and 34 (1) of the Immigration Control Act 7 of 1993.

[3] He pleaded guilty to the charge and was questioned in terms of section 112 (1) (b) of the CPA. I am satisfied that the accused admitted all the allegations and essential elements of the offence and was correctly convicted.

[4] The following sentence was imposed:

'N\$ 2000.00 or 6 months of which 1000.00 or 3 months is to be suspended for a period of five years on condition accused is not convicted of the offence of failure to present themselves to an immigration officer during the period of suspension.'

[5] The accused was convicted for contravening a statutory provision. It follows that the provision creating the offence must appear in the sentence. Furthermore, the period of suspension must relate to the commission of the crime during a specified period of time, hence the word 'committed' should form part of the sentence.¹ The sentence imposed in this matter should be amended.

[6] In the result, it is ordered as follows:

1. The conviction is confirmed.
2. The sentence is amended to read as follows:

A fine of N\$ 2000.00 or 6 months imprisonment of which N\$ 1000.00 or 3 months is suspended for a period of five years on condition that the accused is not convicted of contravening section 34(3) of the Immigration Control Act 7 of 1993: Failure to present himself to an immigration officer, committed during the period of suspension.

Judge(s) signature	Comments:
MUNSU AJ	NONE

¹ Terblanche SS, 2007 *Guide to Sentencing in South Africa*, 2nd ed Lexis Nexis, Durban, p 362.

SALIONGA J	NONE
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