

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REVIEW JUDGMENT

<b>Case Title:</b> The State v Sakaria Jesaya Amupolo	<b>Case no:</b> CR 17/2022 Outapi 391/2021
	<b>Division of Court:</b> Northern Local Division
<b>Heard before:</b> Honourable Lady Justice Salionga J et Honourable Mr Justice Kessler AJ	<b>Delivered on:</b> 20 April 2022
<b>Neutral citation:</b> <i>S v Amupolo</i> (CR 17/2022) [2022] NAHCNLD 43 (20 April 2022)	
<b>It is hereby ordered that:</b> <ol style="list-style-type: none"><li>1. The conviction is confirmed.</li><li>2. The sentence is amended to read 24 (twenty-four) months imprisonment.</li></ol>	
<b>Reasons for the order:</b>	
KESSLAU AJ (SALIONGA J concurring):  [1] The matter comes before this court on automatic review.  [2] The accused appeared in the Magistrates Court in the district of Outapi charged with assault with the intent to do grievous bodily harm (read with the provisions of the	

Domestic Violence Act 4 of 2003).

[3] After a trial the accused was convicted and sentenced to 24 (twenty-four) years direct imprisonment.

[4] Upon perusal of the record the Magistrate was queried in the following terms: '(a) Does the jurisdiction of the Magistrate's Court allow for the sentence of 24 years imprisonment imposed?

(b) Did the Warrant of Committal, issued on the date of sentence, reflect the imprisonment of 24 years?'

[5] The magistrate responded by stating: 'The learned Magistrate admits maximum negligence failing to scan record properly and pardons for mercy before the Honorable judge. The correct sentence to be reflected on the record is 24 months imprisonment. Such error is corrected and the record is hereby returned with'. (sic) A copy of the warrant of committal was also attached to the reply, indicating the sentence as twenty-four months imprisonment.

[6] It is clear from the majority of reviews received that some Magistrates are failing to ensure the correctness of records<sup>1</sup>. It appears that review covers sheets are certified without magistrates ensuring that the record is in order<sup>2</sup>. The Magistrate in this matter admits 'maximum negligence' and should take note that the negligent or indolent performance of official duties is listed in Schedule 3 of the Regulations regarding Magistrates as a ground for disciplinary proceedings that can result in dismissal<sup>3</sup>.

[7] Jurisdiction of the Magistrates Court is limited in terms of section 92 of the Magistrate's Court Act 32 of 1944 to a fine not exceeding N\$ 20 000 or imprisonment for a period not exceeding five years.

[8] The Magistrate stated in the reply that 'such error is corrected...' however once sentence is passed the court is *functus officio*. The only corrections allowed by a Magistrate will be if section 298 of the Criminal Procedure Act 51 of 1977 applies which reads: 'When by mistake a wrong sentence is passed, the court may, before or immediately after

<sup>1</sup> S v Mwilima (CR 38 /2021) [2021] NAHCMD 221 (10 May 2021)

<sup>2</sup> S v Immanuel (CR 3/2021) [2021] NAHCNLD 4 ( 29 January 2021);

<sup>3</sup> See Regulation 18A and Schedule 3 of Regulations regarding Magistrates, 2003.

it is recorded, amend the sentence'. The current situation, where a substantial period has passed, does not qualify as 'immediately after it is recorded'.

[9] The conviction is in order and will be confirmed. The sentence is incompetent and will be amended. Fortunately, the correct sentence was reflected on the documentation to the correctional facility and by amending the sentence the accused will suffer no prejudice.

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

1. The conviction is confirmed.
2. The sentence is amended to read 24 (twenty-four) months imprisonment.

Judge(s) signature	Comments:
KESSLAU AJ:	
SALIONGA J:	