

Case Title: <i>The State v Simon Kooper</i>	Case No: CR 22/2019
High Court MD Review No: 138/2018	Division of Court: Main Division
Heard before: Mr Justice Liebenberg <i>et</i> Lady Justice N N Shivute	Delivered on: 01 April 2019
Neutral citation: <i>S v Kooper</i> (CR 22/2019) [2019] NAHCMD 74 (01 April 2019)	
The order:	
<ol style="list-style-type: none"> 1. The conviction is confirmed. 2. The sentence is confirmed but amended to read as follows: 'Two (2) years' imprisonment of which 1 (one) year is suspended for a period of five (5) years' on condition that the accused is not convicted of an assault with the intent to do grievous bodily harm, committed during the period of suspension'. 	
Reasons for order:	
LIEBENBERG J (concurring SHIVUTE J)	
<ol style="list-style-type: none"> 1. This is a review in terms of section 302(1) of the Criminal Procedure Act 51 of 1977 as amended. 2. The accused appeared in the Magistrate's Court in the district of Lüderitz on a charge of assault with intent to do grievous bodily harm <i>r/w</i> with the provisions of the <i>Domestic Violence Act</i>, 4 of 2003. He was convicted as charged. The conviction is in accordance with justice and will be confirmed. 3. However, the sentence imposed is not properly framed and needs to be corrected. The accused was sentenced to '2 (two) years imprisonment of which 1 (one) is suspended for 5 (five) years on condition that accused is not convicted of contravening any provision of Act 4 of 2003 committed during the period of suspension'. 	

4. The court in *S v Angula*¹ stated the following with regards to condition of suspension not clearly framed:

' [3] The general principle in the formulation of a sentence is that the conditions of suspension must be clear, not only so that the accused can understand what he or she has to do or avoid to ensure that the suspended sentence is not put into operation, but also that the court which later has to decide whether or not to put the sentence into operation, is able to determine the ambit of the conditions of suspension. When the conditions are not clear that court might conclude that the accused did not properly understand the conditions; or itself might be uncertain as to whether or not there was a breach of the conditions. In such instance the accused must be given the benefit of the doubt and the suspended sentence will not be put into operation. Obviously, that would defeat the purpose of the sentence imposed and will not be in the interest of justice.'

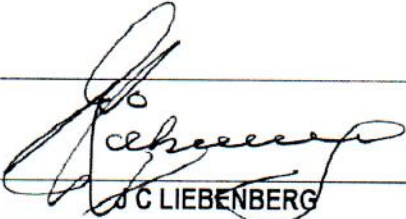
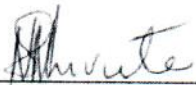
5. The condition of suspension of the sentence in the present instance is such that neither the accused nor a subsequent court would be able to determine the ambit of the conditions of suspension due to the fact that it is overly broad. To this end the sentence stands to be corrected.

6. In the result, it is ordered that:

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

'Two (2) years' imprisonment of which 1 (one) year is suspended for a period of five (5) years on condition that the accused is not convicted of an assault with the intent to do grievous bodily harm, committed during the period of suspension'.

¹ (CR 12/2013) [2013] NAHCNLD 30 (21 May 2013) at para 3.

	
J C LIEBENBERG JUDGE	N N SHIVUTE JUDGE