



**CASE NO.: CR 05/2009**

**IN THE HIGH COURT OF NAMIBIA HELD  
IN OSHAKATI**

In the matter between:

**THE STATE**

and

**LAZARUS AMAKALI**

*(High court Review no 60/09)*

**CORAM: LIEBENBERG, AJ et SHIVUTE, AJ**

Delivered on

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**REVIEW JUDGMENT**

**LIEBENBERG, AJ:** [1] The accused in this case appeared in the Ondangwa Magistrate's Court on a single count of theft of N\$500 in cash, to which he pleaded guilty. Subsequent thereto he was convicted and sentenced to a wholly suspended sentence which is framed in the following terms: "*N\$800.00 or 5 (five) months imprisonment wholly suspended for 5 (five) years on condition: 1. Accused is not convicted of theft within period of suspension.*"

[2] The conviction is in order and will be confirmed, however the sentence is not as the word “committed” has been omitted from the suspended sentence. The condition of suspension should read that the accused should not (again) be convicted of theft committed *during the period of suspension* and not that he should not be convicted of theft *during the period of suspension*. There is a difference. The sentence as it now reads cannot be allowed to stand and has to be amended.

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

1. The conviction is confirmed.
2. The sentence is amended to read: N\$800 or 5 months imprisonment wholly suspended for 5 years on condition that the accused is not convicted of theft committed during the period of suspension.

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**LIEBENBERG, AJ**

**I concur.**

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**SHIVUTE, AJ**