



CASE NO.: CR 73/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

SIEGFRIED KOOPER

MARY-ANN MOUTON

[HIGH COURT REVIEW CASE NO.: 997/2010]

CORAM: SWANEPOEL, J *et* SIBOLEKA, J

Delivered on: 2010 OCTOBER 13

REVIEW JUDGMENT:

SIBOLEKA, J.:

[1] The two accused appeared in the District Magistrate Court at Walvis Bay on a charge of assault with intent to do grievous bodily harm. They pleaded guilty and after questioning in terms of section 112(1)(b) of

Act 51/77 were accordingly convicted.

[2] The conviction is in accordance with justice and will not be tampered with.

[3] The two accused were however sentenced as follows:

“Sentence: Fine

Fine Amount: N\$3000,00 (Three Thousand Namibian Dollars) of which N\$1.500,00 (One Thousand Five Hundred Namibian Dollars) is suspended for a period of 2 (two) years on the following conditions:

N\$3000,00 (Three Thousand Namibian Dollars) or six (8) months imprisonment of which N\$1.500,00 (One Thousand Five Hundred Namibian Dollars) or four (4) months imprisonment are suspended for two (2) years on condition that both accused are not convicted of assault, assault with intent to do grievous bodily harm committed during the period of suspension;

Or

Sentence: Imprisonment Term: 8 (Eight) months imprisonment of which 4 (Four) months is suspended for a period of 2 (Two) years on the following conditions: N\$3000,00 (Three Thousand Namibian Dollars) or six (8) months imprisonment of which N\$1.500,00 (One Thousand Five Hundred Namibian Dollars) or four (4) months imprisonment are suspended for two (2) years on condition that both accused are not convicted of assault, assault with intent to do grievous bodily harm committed during the period of suspension.”

[4] The above sentence is confusing. The condition of suspension requires both accused to be convicted before the suspended sentence can be put into operation.

[5] The purpose of a suspended sentence is to regulate the future conduct of the accused. He must therefore be able to understand what he must not do to stay away from trouble. (See *S v Sadie Mouton* Case No. CR 161/2007 unreported).

[6] In the result:

- (a) The conviction is confirmed.
- (b) The sentence imposed by the Magistrate is set aside and substituted with the following:

A fine of N\$3.000,00 or (8) eight months imprisonment of which N\$1.500,00 or (4) four months are suspended for (5) five years on condition that the accused is not found guilty of assault or assault with intent to do grievous bodily harm, committed during the period of suspension.

SIBOLEKA, J

I agree.

SWANEPOEL, J

