



CASE NO.: CR 57/2012

IN THE HIGH COURT OF NAMIBIA

HELD IN WINDHOEK

In the matter between:

THE STATE

and

KENNETH MUNGUNDA

ANDREAS MUKYATA

(HIGH COURT REVIEW CASE NO.:1073/2012)

(MAGISTRATE'S SERIAL NO.: 59/2011)

CORAM: PARKER, J et SHIVUTE, J

Delivered on: 2012 July 04

REVIEW JUDGMENT

SHIVUTE, J:[1] The two accused persons were convicted of theft upon their own plea of guilty and sentenced to N\$5000.00 (five) thousand Namibia dollars or 12 (twelve) months' imprisonment.

[2] I directed a query to the learned magistrate as follows:

“The two accused persons were convicted of theft. They were sentenced to N\$5000.00 (five) thousand Namibia dollars or 12 (twelve) months' imprisonment. Does this mean that each accused's paying a fine of N\$5000.00 in default of payment 12 months' imprisonment or does it mean that each accused will pay a fine of N\$2500.00 in default 6 months' imprisonment? The sentence appears to be vague.”

[3] The magistrate replied in the following terms:

“The accused persons must each pay a fine of N\$5000.00 (five) thousand Namibia dollars or in default of payment 12 (twelve) months’ imprisonment.”

[4] The conviction is in order. However, I have a problem with the way the sentence has been formulated. The sentence must be clear and precise. It should not be left to the accused to guess what is expected of him. Ambiguity should be avoided when formulating sentence.

[5] The sentence imposed by the learned magistrate is ambiguous and it cannot be allowed to stand.

[6] In the result the following order is made:

- (1) The conviction is confirmed.
- (2) The sentence of N\$5000.00 (five) thousand Namibia dollars or 12 (twelve) months imprisonment is altered to read: Each accused is sentenced to a fine of N\$5000.00 (five) thousand Namibia dollars or in default of payment 12 (twelve) months’ imprisonment.

SHIVUTE, J

I agree.

PARKER, J