



CASE NO.: CR: 18/2009

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

In the matter between:

THE STATE

and

SIMON MWANDINGI SHITUKU

(HIGH COURT CASE NO.:91/2009)

CORAM: SHIVUTE, A.J et LIEBENBERG, A.J

Delivered on: 01 June 2009

REVIEW JUDGMENT:

SHIVUTE, A.J.: [1] The accused was charged in the Magistrate's court Ondangwa with two counts namely: first count Assault and a second count of Assault with intent to do grievous bodily harm. He was convicted on both charges

and sentenced to N\$3000.00 (three thousand N\$) or in default of payment 3 (three months) imprisonment for the assault and to a fine of N\$1000.00 (one thousand N\$) or in default of payment of 6 (six) months imprisonment of which N\$500.00 (five hundred N\$) or 2 (two) months are suspended for a period of five (5) years on condition accused is not convicted of any offence of which violence is an element committed within the period of suspension.

Both convictions are in order.

[2] A query was directed to the magistrate as follows:

Does section 112 (1) (a) of Act 51 of 1977 permit the Court to impose a fine of N\$3000.00?

The magistrate responded to the query as follows:

“My answer to the above mentioned is No. It must have been a typing error on the typist side and I apologize for that. Page 4 of the original case record reflects in my handwriting that the fine imposed in relation to count, which is now in question, reflects N\$300.00 (three hundred N\$) or in default of payment 3(three) months imprisonment. Thus according to page 4 of the record, was the accused never sentenced to N\$3000.00 but N\$300.00 (three hundred N\$).

[3] This Court is in agreement with the trial magistrate that section 112 (1) (a) of Act 51 of 1977 does not permit the Court to impose a fine of N\$3000.00.

[4] Section 112 (1) (a) Act 51 of 1977 authorizes a presiding officer to convict an accused on his bare plea of guilty in circumstances where such presiding officer is of the opinion that the offence in question does not merit certain kinds of punishment or a fine not exceeding N\$300.00. Therefore the imposition of N\$3000.00 fine is not permitted by the above mentioned section.

[5] The trial magistrate indicated that N\$3000.00 fine was reflected as a result of a “typing error by the typist, as the original case record in her handwriting reflects that the fine imposed is N\$300.00”.

[6] What the magistrate said is true, but it is unfortunate that the J4 which is the review covering sheet reflects a different position which was signed by the magistrate. The magistrate by signing the review covering sheet certifies that all the particulars including the conviction and sentence are correct.

[7] I must point out that the magistrate by just signing without having proper attention to what she is affixing her signature has acted negligently. Therefore it is very important for the magistrate to pay particular attention to what she is signing for.

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

1. Both convictions are confirmed

2. The sentence in respect of count 1 is amended to read:

N\$300.00 fine (three hundred N\$) or in default of payment 3 (three) months imprisonment.

3. The sentence on the second count is confirmed.

_____ (Signed)

SHIVUTE, A.J.

I agree

_____ (Signed)

LIEBENBERG, A.J