



CASE NO.: CR 24/2008

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

KAFULA SAKARIA

(HIGH COURT REVIEW CASE NO.: 566/2008)

CORAM: MULLER, J *et* MANYARARA, AJ

Delivered on: 21 April 2008

REVIEW JUDGMENT

MANYARARA, AJ.:

[1] The accused pleaded not guilty to contravening s 38(1)(o) of Act 7 of 1996 (unlawful discharge of a firearm in a public place). However, he was convicted and sentenced to 10 years imprisonment, with 5 years suspended.

[2] The case record has been forwarded on review under cover of the magistrate's note stating that the sentence should be set aside because he has no jurisdiction to impose such sentence. This is correct. But the magistrate goes on to state that as the offence is serious he had in mind a sentence of 5 years imprisonment with 2½ years suspended.

Presumably he requests that the sentence be altered accordingly. However, he is wrong in this request.

[3] The sentencing provision for the offence is section 38(2)(d) of the Act. This provides for a fine not exceeding N\$4000-00 or imprisonment for a period not exceeding one year or both such fine and imprisonment. Indeed, thus was the sentence requested by the prosecutor without citing the provision.

[4] The offence is very serious as the prosecutor submitted, in that it was proved that the discharge of the firearms endangered the lives of two persons, i.e. a workmate of the accused and the accused's own girlfriend who he suspected of having an affair with his said workmate.

[5] The conviction is proper and it is confirmed. The offence was serious as the magistrate stated but he certainly had no jurisdiction to impose the sentence he imposed and that sentence is hereby set aside. In its place, I would substitute a sentence of a fine of N\$2000 or 12 months imprisonment.

MANYARARA, AJ

I agree

MULLER, J