



CASE NO.: CR 08/2009

IN THE HIGH COURT OF NAMIBIA

HELD IN OSHAKATI

In the matter between

THE STATE

and

ARON ANGULA

(High court review no: 92/2009)

CORAM: LIEBENBERG, AJ et SHIVUTE, AJ

Delivered on: 31 March 2009

REVIEW JUDGMENT

LIEBENBERG, AJ.: [1] In this matter the accused appeared before a Magistrate at Ondangwa on a charge of Housebreaking with intent to steal and theft.

[2] He pleaded guilty and was upon his conviction sentenced to:

“Eighteen (18) months imprisonment of which 8 (eight) months is suspended for a Period of 5 (five) years on condition that accused is not convicted of Housebreaking or Theft within period of suspension”. (sic)

[3] The conviction is in order and will be confirmed. The problem with the sentence is two fold. Firstly, there is no such crime as “housebreaking” and secondly, the word “committed” has been omitted from the suspended sentence.

[4] Week after week review judgments are delivered by this Court in which the conditions of suspended sentences imposed by the *same* magistrate have to be amended as they are incorrectly framed like in the present matter.

See: The *State vs. Simon Kambonde* Case No: CR 07/2009 (unreported) delivered 20 March 2009, *The State vs. Ziggy Speedo*, Case No: CR 06/2009 (unreported) delivered 17 March 2009. The *State vs. Lazarus Amakali*, Case No: CR 05/2009 (unreported) delivered 13 March 2009.

[5] These mistakes are elementary and because proper care is not taken, judges are obliged to repeat themselves in review judgments. The benefit of these judgments is that magistrates, by reading the judgments, can learn from the mistakes they and others make. I therefore urge all magistrates to read the judgments delivered in review (and appeal) matters.

[6] As stated in The *Simon Kambonde* matter (*supra*) “housebreaking” in itself is not a crime. It constitutes a crime only when the offender commits housebreaking with a specific intent viz. to steal; to assault; to rape etc. If the offender in the process of entering damages the property of the complainant, then he is guilty of the offence of malicious damage to property and not of “housebreaking”.

[7] Furthermore, the conditions of suspension must be clear and specific as the accused must understand them and know how to behave himself in compliance thereof.

[8] The conditions of suspension of the sentence imposed in this case do not meet the requirements set out above and the sentence has to be amended.

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

1. The conviction is confirmed.
2. The sentence is altered to read:

“18 months imprisonment of which 8 months imprisonment is suspended for a period of 5 years on condition that the accused is not convicted of Housebreaking with intent to steal or Theft committed during the period of suspension”.

LIEBENBERG, AJ

I concur

SHIVUTE, AJ

