



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case no: CR: 55/2013

In the matter between:

**THE STATE**

and

**MAKENZIE TSOWASEB**

**ACCUSED**

(HIGH COURT MAIN DIVISION REVIEW REF NO. 666/2013)

**Neutral citation:** *State v Tsowaseb* (CR 55/2013) [2013] NAHCMD 244 (15 August 2013)

**Coram:** HOFF J and SMUTS J

**Delivered:** 15 August 2013

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## ORDER

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- (a) The conviction is confirmed.
- (b) The sentence is amended to read as follows:

N\$3000 or 20 months imprisonment of which N\$1500 or 10 months imprisonment are suspended for a period of 3 years on condition that the accused is not convicted of assault, assault with intent to do grievous bodily harm, or of domestic violence as defined in section 2 of Act 4 of 2003 committed during the period of suspension.

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## JUDGMENT

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HOFF J (SMUTS J concurring):

[1] The accused was convicted of assault with intent to do grievous bodily harm (read with the provisions of the Domestic Violence Act 4 Of 2003) and sentenced as follows:

‘N\$3 000.00 or 20 months imprisonment of which N\$1 500.00 or 10 months imprisonment are suspended for a period of 3 years on condition that the accused is not convicted of assault, assault with intent to do grievous bodily harm or any offence under Act 4 of 2003 committed during the period of suspension.’

[2] I directed a query to the magistrate enquiring whether that part of the sentence which refers to ‘any offence under Act 4 of 2003 committed during the period of suspension’ is not too wide and onerous.

[3] The magistrate in her reply conceded that it is too wide and suggested that an amended sentence may read: 'the accused is not convicted of contravening section 2 of Act 4 of 2003'.

[4] Section 2 deals with the definition of domestic violence.

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

(a) The conviction is confirmed.

(b) The sentence is amended to read as follows:

N\$3000 or 20 months imprisonment of which N\$1500 or 10 months imprisonment are suspended for a period of 3 years on condition that the accused is not convicted of assault, assault with intent to do grievous bodily harm, or of domestic violence as defined in section 2 of Act 4 of 2003 committed during the period of suspension.

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E P B HOFF  
Judge

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D SMUTS  
Judge