

174/07

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

ANDRIES MATHEE

(HIGH COURT REVIEW CASE NO.: 149/07)

CORAM: MAINGA, J et VAN NIEKERK, J

Delivered on: 2007-12-13

REVIEW

JUDGMENT:

VAN NIEKERK, J:

[1] The accused was tried and convicted of housebreaking with intent to steal and theft by the Magistrate, Opuwo. He was sentenced to N\$600 or 6 months imprisonment.

[2] The record does not make sense in several instances. After the State case was closed, the accused is recorded to say:

"I do not wish to say anything in my defence what the witness has said is true. That is my defence. I will speak in English and I am 50 years old."

[3] The last sentence seems to have been inserted at some later stage with a different pen. (The magistrate denies this). Then the prosecutor proceeds to cross-examine the accused, although the latter

did not elect to testify and was apparently not sworn in. The magistrate concedes that this was an irregularity.

[4] After the accused's address in mitigation of sentence the following is recorded:

"PP - we do not have objections to the State proceeding to take mitigation. I am guilty as charged today. There are no PCs. Court finds accd:- Guilty as charged.

Court explains mitigation." (my underlining)

[5] Although it seems that the underlined words were inserted at a different stage in the handwritten record, the magistrate denies this. The magistrate states that "PCs" stands for "previous convictions" and concedes that the prosecutor should not have been allowed to deal with the accused's previous convictions or lack thereof before the verdict on the merits of the case.

[6] The magistrate further concedes that the accused's rights to cross-examination were not explained. This is a further irregularity.

[7] Although it would appear from what the accused said that his rights after the closure of the State case were explained, this fact nor the contents of the explanation was recorded.

[8] As the magistrate in his response to my query states, "the record of proceedings is in a shambles".

[9] I think there is no alternative but to order that the proceedings are set aside.

VAN NIEKERK, J

I agree

MAINGA, J