

172/07

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

- 1. AMUTENYA MEKONDJO NICANOR**
- 2. ONESMUS THOMAS**
- 3. MWATILE NIITEMBU**
- 4. MATHEUS NIITEMBU**

(HIGH COURT REVIEW CASE NO.: 1785/05)

CORAM: MAINGA, J et VAN NIEKERK, J

Delivered on: 2007-12-13

REVIEW JUDGMENT:

VAN NIEKERK, J:

[1] The four accused were convicted in the Ondangwa magistrate's court on four counts of housebreaking with intent to steal and theft and one count of housebreaking with intent to commit an offence unknown to the State. The counts were taken together for sentence and the accused were sentenced to five years imprisonment of which two years are conditionally suspended.

[2] The accused pleaded guilty to all the charges. During the questioning in terms of section 112(1)(b) of the Criminal Procedure Act, the accused all denied that they entered the premises. They admitted that they broke an outer door, but failed to break the inner door. The magistrate did not ask any questions to determine whether there was an entering of the premises between the outer and inner door. The magistrate concedes that the element of "entering" was not admitted and suggests that the conviction be altered to one of an attempt to commit the offence in question. I agree that this is the proper course to take.

[3] The result is the following:

1. The convictions of all four accused on counts 1, 2, 3 and 4 are confirmed.

2. The convictions of all four accused on count 5 are set aside and substituted with convictions of Attempted housebreaking with intent to commit an offence unknown to the State.

3. The sentences of all the accused are confirmed.

VAN NIEKERK, J

I agree

MAINGA, J