

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**ISAK NATANGWE WILBARD**

**Accused**

**HIGH COURT REVIEW CASE NO. 594/08**

**CORAM: MAINGA J. et ANGULA, A.J**

Delivered on: 2008.05.22

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**REVIEW JUDGMENT:**

**ANGULA, A.J.:**

[1] This matter was referred to me by the Regional Magistrate in terms of Section 116 (3)(a) of the Criminal Procedure Act, 1977.

[2] It appears from the record that the accused 1 and 2 were jointly charged in the Magistrate's Court with theft of stock. Accused 1 pleaded guilty to the charge. Thereupon the Magistrate ordered a separation of trial and ordered that the matter in respect of accused 1 be referred to the Regional Court for sentence. I am in agreement with the learned Magistrate of the Regional Court that the proceedings in the Magistrate's Court were procedurally flawed. The Magistrate should also have requested accused 2 to plead before a separation of trial could be ordered. If for instance accused number 2 had pleaded guilty there would not have been a separation of trials.

[3] Accordingly, the Magistrate's order separating the accused trials is set aside. The matter is referred back to the Magistrate's Court, in order to ask accused 2 to plead to the charge. The Magistrate is further directed, before requesting accused 2 to plead to the charge, to fully explain to the accused the implications of the provisions of the Stock Theft Act, No 12 of 1990, as amended. Only in the event accused 2 has pleaded not guilty to the charge

that there would be an order for separation of trials.

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**ANGULA A.J.**

I concur.

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**MAINGA, J.**