

**IN THE HIGH COURT OF NAMIBIA**

In the matter between

**THE STATE**

versus

**NORMAN BRIAN ISAACK**

**[HIGH COURT REVIEW CASE NO.:838/08]**

**CORAM: MAINGA, J et PARKER, J**

Delivered on: 2008 June 16

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**REVIEW JUDGMENT:**

**PARKER, J.:**

[1] In this matter the accused appeared before the Keetmanshoop Magistrate's Court on several occasions; the last occasion, which is relevant to the present review, was on 30 April 2008. On a previous occasion, that is, 5 December 2007, the case was due for plea and trial; however, owing to the fact that the public prosecutor seized with the matter was attending a Conference the acting prosecutor asked the court to postpone the case to 28 March 2008 for plea and trial. Whereupon, the accused informed the court that he would like the court to place on record that the case was postponed to that date, i.e. 5 December 2007, at the request of the State and the prosecutor informed the court then that that would be the last postponement. The

accused informed the court further that the incessant postponements were interfering with his work and, moreover, he did not understand why an “assault case will be investigated so long.”

[2] Despite the accused’s protestation, the court postponed the case to 08h30 on 28 March 2008 for plea and trial. On that date, the State once more asked the court to postpone the matter to 11 April 2008 to enable the investigating officer to testify; and once again the court granted the public prosecutor’s request. On 11 April 2008, the state once more asked for yet another “final” postponement to 30 April 2008 because the investigating officer had failed to appear in the court: his requested was once again granted.

[3] On 30 April 2008, the investigating officer gave evidence; the court informed the accused of his right to cross examine the State witness. The court also explained to him the nature and purpose of cross-examination. The accused informed the court that he did not have questions to put to the witness.

[4] There is nothing in the record to show that the accused did plead; yet the matter had been postponed to 30 April 2008 for plea and trial. The following precedes the testimony of the State witness (quoted verbatim):

Accused present before court for investigating officers testimony.

P/P: Matter on roll for investigating officer’s testimony may Mr. Aribeb take the oath.

Court proceed in swearing in witness.

[5] Thereafter, the investigating officer testified, as aforesaid. The next thing that happened after the investigating officer had given his evidence and which appears in the record is the following (quoted verbatim):

P/P: Since it appears that the complainant has lost interest in this matter. I therefore close the state’s case and has no objection if the accused is released in terms of section 174 (of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (CPA).

Court: Accused you are discharge in terms of section 174 of the CPA 51/1977.

[6] In a note accompanying the submission for review, the learned Chief Magistrate, Keetmanshoop, states that during his inspection of the court record he found that (quoted verbatim) “no charge was drawn against the accused detailing what the accused have done nor he was asked to plead to the charge and thus accused was

not entitled to any judgment as the case in this matter.” The learned Chief Magistrate continues, “The Prosecutor did not inform the court that he has the authority from the Prosecutor-General to stop the proceedings.” Therefore, in his opinion the procedure adopted by the court is not in accordance with justice.

[7] The hearing of the evidence of the State witness was irregular for the simple reason that the accused had not pleaded.

[8] It follows that, in my opinion, the proceedings were tainted with a serious irregularity, and therefore the proceedings were not in accordance with justice. In the result I make the following orders:

- (1) the proceedings and the decision of the trial court to discharge the accused in terms of s 174 of the CPA are a nullity and therefore they are set aside.
  
- (2) the Prosecutor-General is at liberty to prosecute the accused, if she so wishes.

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Parker, J

I agree.

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Mainga, J