



CASE NO.: CR 44/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

MARIA KATJITUWO

[HIGH COURT REVIEW CASE NO.: 688/2010]

CORAM: SWANEPOEL, J et SIBOLEKA, J

Delivered on: 2010 SEPTEMBER 24

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The 52 year old accused appeared in the District Magistrate Court at Grootfontein on two counts of Possession of Dependence Producing Drugs. (Cannabis) in contravention of section 2(b) of Act 41 of 1971. She pleaded guilty and after questioning in terms of section 112(l)(b) she was convicted.

[2] When the matter came before me for review I directed the following query to the Magistrate:

"The accused has been charged on contravening sec. 2(b) - (possession) on both the first and second count, but you convicted her on contravening sec. 2(a) - (dealing); please explain."

The Magistrate's reply has now been received and it states that:

"Kindly place this record before the Honourable reviewing Judge; Mr. Justice Siboleka with following response to the query raised in the review minute;

There was typing error on the annexure to the main count as it refers to a contravention of section 2(b) (possession) when in fact it should have been typed as contravention of section 2(a) (dealing). The original charge sheet shows that the main count was that of unlawfully dealing in the prohibited drug in question. A perusal of the essential elements canvassed during the section 112(l)(b) questioning will also reflect the same.

This was just a typing error on the part of the typist, when the record was being prepared for review and which unfortunately I did not pick up during proof reading.

A correctly typed annexure has been attached herewith. Further the review case cover should read section 2(a) and not 2(A)."

[3] The Magistrate has conceded that the accused was in fact charged for dealing in dependence producing drug (cannabis) as the main count and for possession of dependence producing drug (cannabis) on the alternative count, and that it was a typing error.

[4] It is my considered view that the error (mistake) is not fatal and did not cause any prejudice to the accused.

[5] In the result:

(a) The conviction and sentence are confirmed.

SIBOLEKA, J

I agree

SWANEOEL, J