



CASE NO.: CR

63/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

NOKKIE LOUW

TONY WILLIAM LOUW

[HIGH COURT REVIEW CASE NO.: 754/2010]

CORAM: PARKER, J *et* SIBOLEKA, J

Delivered on: 2010 OCTOBER 06

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The two accused appeared before the District Magistrate Court at Otjiwarongo on the following charges: Housebreaking with intent to

Steal and Theft; Robbery with aggravating circumstances; Theft taking into consideration the provisions of Section 11(1)(a); 1, 14 and 17 of Act 12/1990 as amended by Act 19/2004 - Stock theft, Assault by threat.

[2] They pleaded not guilty and the trial started. However, in the meantime the trial Magistrate, Ms. Olivia Mutjavikua left the Magistracy, as per attached covering letter.

[3] The trial was still at the stage of the State's case, there was a trial within a trial and therefore conviction and sentence had not yet been handed down.

[4] This Court is requested to direct that the matter start *de novo* before another Magistrate.

[5] I must mention here that this Court can only review a matter that has been finalized by a Lower Court, that is, a matter in which sentence has been imposed. See *State v April* 1985(1) SA at page 639 H-I. However, it has inherent jurisdiction that enables it to review matters referred to it from the Lower Courts before conviction and the passing of sentence. (See *R v Stevens* 1969(2) SA 572)

[6] As a general rule it is undesirable for a High Court to entertain appeals or review from a Lower Court before the trial has been concluded. The High Court restricted its power to intervene in uncompleted proceedings in a Lower Court to those rare cases where a grave injustice would otherwise result or where justice could not be attained by other means. (See *Levack and others v Regional Magistrate Wynberg and Another* 1999(4) SA 747 at page 748 H.

[7] It could have been appropriate for any other Magistrate to start the matter afresh as long as he endorsed the permanent absence of the trial Magistrate on the record of proceedings. In that way unnecessary delays would have been avoided.

[8] In the result:

The proceedings are set aside and the matter is referred back to the District Court, Otjiwarongo to start afresh before any other Magistrate.

SIBOLEKA, J

I agree.

PARKER, J