



CASE NO.: CR 51/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

ELIASER SHIKONGO

(HIGH COURT REVIEW CASE NO.: 847/2011)

CORAM: MULLER, J et SWANEPOEL, J

Delivered on: 17 June 2011

REVIEW JUDGMENT

MULLER, J.: [1] The accused was charged with the offences of theft and malicious damage to property. The second count was withdrawn. He pleaded guilty to the charge of theft. The magistrate proceeded in terms of s 112(1)(a) of the Criminal Procedure Act, no. 51 of 1977 (CPA) and convicted him. He was a first time offender and was sentenced to pay fine of N\$4 000.00 or 18 months imprisonment.

[2] The magistrate obviously took note of recent judgments such as S v Shikale Onesmus and Others in respect of the application of s 112 (1)(a) of the CPA in respect of certain offences and referred this matter to be reviewed.

[3] I am in agreement that theft of cash in an amount of N\$900.00 is not a minor offence whereby the provisions of s 112(1)(a) of the CPA ought to be invoked. The magistrate should have questioned the accused in terms of s 112(1) (b) of the CPA, even if the prosecutor did not ask for it. The purpose of such questioning in terms of S 112 (1)(b) is to be satisfied that the accused does admit all the elements of the charge. Without such questions and his response thereto, the magistrate cannot be so satisfied.

[4] In the circumstances, the conviction and sentence have to be set aside and the matter referred back to the magistrate to question the accused in terms of s 112 (1)(b) of the CPA and, if satisfied, to convict him.

[5] In the result the following orders are made:

1. The conviction and sentence of the accused are set aside; and
2. The matter is referred back to the magistrate to apply s 112(a)(b) of the CPA in respect of accused's plea of guilty.

MULLER, J

I agree

SWANEPOEL, J