



CASE NO.: CR

56/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

FRANS ANTON KAKUTHEYA AND SABASTIAN KAMPUNGU

[HIGH COURT REVIEW CASE NO.: 1208/2011]

CORAM: SWANEPOEL, J et SIBOLEKA, J

Delivered on: 2011 JULY 15

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The two accused appeared before the Magistrate's Court at Katima Mulilo on the charge of theft involving eleven solar panels value not very clear or certain from the record of proceeding.

[2] The two accused pleaded not guilty and evidence was lead. At the close of the State's case, accused no. 2 was correctly discharged in terms of section 174 of Act 51/77. Accused no. 1 was placed on his two feet as there was a *prima facie* case against him, but opted to remain silent. In my view the evidence that he sold one solar panel whose value is unknown remained unchallenged, resulting in the State establishing theft in that regard only.

[3] The trial Magistrate has since left the profession and could thus not be asked to explain why she handed the conviction: "Guilty as charged and convicted accordingly" for accused no. 1.

[4] In my view apart from the shortcomings pointed out in the conviction, the suspended sentence is also not properly worded.

[5] In the result the sentence is altered by adding the following paragraph to it:

"... on condition that the accused is not convicted of theft, committed during the period of suspension."

The conviction is set aside and replaced with the following:

Accused no. 1: Guilty of Theft of one solar panel the value of which is unknown.

SIBOLEKA, J

I agree.

SWANEPOEL, J