



CASE NO.: CR

60/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

MERES HERMANUS CLOETE

[HIGH COURT REVIEW CASE NO.: 1740/2010]

CORAM: NDAUENDAPO, J et SIBOLEKA, J

Delivered on: 2011 JULY 20

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The accused appeared before the Magistrate's Court at Rehoboth on a charge of malicious damage to property valued at N\$4,000.00.

[2] He pleaded guilty and during questioning in terms of section

112(1)(b) of Act 51/77 the following transpired:

“Q: Do you agree that the total value is N\$4,000.00.

A: No, I think the total value is N\$1,200.00.

Despite the above answer the learned Magistrate returned the following verdict:

“Court: Is satisfy accused admits all the allegations in the charge of malicious damage to property.

Judgment: Guilty”

[3] I directed the following query:

“1. The accused denied the N\$4,000.00 to be the value of property damaged and he estimated it to be N\$1,200.00. The Prosecutor was not invited to comment on that development, but the learned Magistrate went on and convicted as charged, as he said he is satisfied that all elements are admitted. Please explain. Your early reply will be appreciated.”

[4] The Magistrate’s reply reads:

“My Lord, I do agree that the value of damaged property in the Charge-Sheet is N\$4000.00 while accused think that or estimate it to be N\$1 200.00 my Lord.

My Lord, my satisfaction is to all the allegation in the charge to the elements of the Malicious Damage to Property and not to the value. Malicious Damage to Property can be for value or lesser value this is only my opinion, my Lord.

My Lord, the Honourable Mr. Justice I do agree that the Prosecutor was not invited to comment on the value that the accused estimate.

My Lord, I thank you very much for advice and guidance and promise that it will not happen in future.”

[5] In my view the sentence is in order, but the conviction cannot be allowed to stand.

[6] In the result the conviction is set aside and substituted with that of:

“Guilty of malicious damage to property whose value is unknown.”

SIBOLEKA, J

I agree.

NDAUENDAPO, J