



CASE NO.: CR 63 /2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

JIM VAN ROOI

(HIGH COURT REVIEW CASE NO.: 848/2011)

CORAM: MULLER, J et SWANEPOEL, J

Delivered on: 22 July 2011

REVIEW JUDGMENT

MULLER, J.: [1] The accused was charged with committing two offences, namely theft and malicious damage to property. He pleaded guilty to both charges. The magistrate thereafter, on the suggestion of the state prosecutor, evoked the provisions of s 112 (1)(a) of the Criminal Procedure Act, no. 51 of 1977 (CPA) and convicted the accused on both counts. He was sentenced on each of the counts to a fine of N\$8 000.00 or four months imprisonment.

[2] When I queried the magistrate why s 112 (1)(a) of the CPA had been applied in the light of the judgment in S v Shikale Onesmus , which I attached, the magistrate conceded that the period of imprisonment exceeded his jurisdiction. However, nothing was said in respect of the nature of the offences the accused was charged with.

[3] It was made clear in the Judgment of S v Shikale Onesmus that s 112(1) (a) of the CPA is only applicable to minor offences. Theft and malicious damage of property can hardly ever be classified as minor offences. S 112 (1)(b) of the CPA should be invoked and the accused should be questioned by the magistrate in order to satisfy himself or herself that the accused indeed admits all the elements of the offence(s) that he or she is charged with. When s 112(1)(a) of the CPA is applied, as it had been in this case, the magistrate cannot be so satisfied.

[4] In the result the convictions and sentences are set aside and the matter is referred back to the magistrate to apply s 112(1)(b) of the CPA and if satisfied, to convict and sentence the accused appropriately.

MULLER, J

I agree

SWANEPOEL, J