



CASE NO.: CR 85/2011

## IN THE HIGH COURT OF NAMBIA

In the matter between:

**THE STATE**

versus

**JOHAN HARASEB**

**ACCUSED 1**

**BRIAN WASSERFALL**

**ACCUSED 2**

*(HIGH COURT REVIEW CASE NO.: 1592/2011)*

**CORAM:** MILLER, AJ *et* DAMASEB, JP

**DELIVERED ON:** 20 September 2011

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### REVIEW JUDGMENT

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#### **MILLER, A J**

[1] This matter was placed before me by the learned magistrate, Mr. Muchali who is attached to the Windhoek Magistrate's Court. The reason why it was placed before me is for me to review the proceedings and put them aside.

[2] The matter arose in the following way.

On 18 July 2011, the two accused appeared before the learned magistrate. They were asked to tender a plea to a charge of housebreaking with the intent to steal and theft. Both pleaded not guilty whereupon the State proceeded to tender evidence in support of the charge. After the evidence of two witnesses had been adduced, the matter was postponed to 2 September 2011.

[3] After the matter had been postponed the learned Magistrate discovered that the two accused had on a prior occasion pleaded to the same charge before a different magistrate.

[4] It is trite that once an accused had pleaded to a charge before a particular magistrate, that magistrate must proceed with the matter. The fact that the accused were again asked to plead to the same charges constituted an irregularity and therefore the proceedings pursuant to the second plea are to be set aside.

[5] I consequently make an order that the proceedings before Mr. Muchali on 18 July 2011 is reviewed and set aside.

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MILLER AJ

I concur

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DAMASEB, JP

