



CASE NO.: CR 1/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

FRANCIS STRAUSS

[HIGH COURT REVIEW CASE NO.: 1743/2010] CORAM:

SIBOLEKA, J *et* NDAUENDAPO, J

Delivered on: 2011 JANUARY 21

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The accused appeared in the Rehoboth Magistrate's Court on a charge of maliciously damaging the glass doors of a certain Sofia van Wyk alleged to be valued at N\$1,500.00. He was questioned in terms of section 112 (1)(b) of Act 51 of 1977, where after he was convicted and sentenced accordingly. The sentence is in order and will not be tempered with. However, there is a slight problem with the wording of the conviction by the Magistrate, and I directed a query to him which reads:

"The accused denied the value of the damaged property to be N\$1,500.00 and instead estimated it at N\$560,00, but the Court was still satisfied that he admitted all the elements."

[2] The Magistrate's response has been received and it reads:

"I am responding to the Honorable Mr. Justice Review remark letter dated 9 November 2010 regarding the above mentioned matter. My Lord, I am or was satisfied that accused admitted all the elements of the offence of Malicious Damage to Property. The offence which I convicted him for and I did not mean the value. This is why I sentenced him to N\$500.00 or five (5) months imprisonment. If the Honorable Mr. Justice is not happy/satisfied with the manner in which I framed my sentence, your advice is always welcome. I hope my Lord, will understand my humble explanation."

[3] It is my considered view that after the accused had denied and disputed one of the elements of the charge leveled against him, the Court should not have pronounced itself as it did:

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

[4] It should have recorded a dissatisfaction and enter a plea of not guilty in terms of section 113 of Act 51/77. This would enable the prosecution to lead evidence to prove the disputed element beyond reasonable doubt. This dispute of the value of the damaged doors is apparent from the following paragraph:

"Q: Do you agree that the value is N\$1,500.00? A: No, the value is N\$560.00"

[5] In my view and looking at the matter as a whole, what has been put in dispute here is not very serious that it could cause prejudice to either side. The Court must have invited the prosecution to react to it, and if accepted as such by the prosecution, the conviction would then have been phrased likewise. On the other hand if after being given an opportunity to react to the dispute, the prosecution opted to lead evidence and thereby succeed to prove that element beyond reasonable doubt, only then would the Court be satisfied that all the elements of the offence have been established.

[6] In the result I make the following order:

1. The conviction is altered to read:

"Guilt of malicious damage to property whose value is unknown".

2. The sentence is confirmed.

SIBOLEKA, J

I agree.

NDAUENDAPO, J