

**CASE NO.: CR 17/2011**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

versus

**RICKY GARISEB**

**ACCUSED**

(HIGH COURT REVIEW CASE NO.: 818/2010)

**CORAM:** UNENGU, AJ *et* SIMPSON, AJ

Delivered on: 22 FEBRUARY 2011

**REVIEW JUDGMENT:**

**SIMPSON, A.J.:** [1] The accused appeared in the district court of Okahandja on a charge of housebreaking with intent to steal and theft. The accused pleaded guilty and was questioned in terms of S112(1)(b) of the Criminal Procedure Act and then convicted on 6 April 2010. The accused was then sentenced to twelve (12) months imprisonment of which four (4) months were suspended on the usual conditions.

[2] The matter was then sent on review and the magistrate was queried as follows:

*"How did the Court satisfy itself that the accused's intention was to steal when he 'broke' into the house if the Court did not ask questions pertaining to the accused's intention?"*

[3] The magistrate replied that the intention of the accused was not established and apologized for the omission.

[4] The accused therefore did not admit to all the allegations as set out in the charge sheet.

[5] When S112(1)(b) of the Criminal Procedure Act is applied, the court must satisfy itself that all allegations in the charge sheet are admitted before a verdict of guilty is pronounced.

[6] As the accused was sentenced on 6 April 2010, it will serve no purpose to remit the matter

back, for the magistrate to proceed with trial, as the accused by now has completed serving his sentence.

[7] In the result, the conviction and sentence is therefore set aside.

**SIMPSON, AJ**

I agree

**UNENGU, AJ**