



CASE NO.: CR 01/2012

NOT REPORTABLE

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

IMANUEL PAULUS

HIGH COURT REVIEW CASE NO.: 2256/2011

CORAM: HOFF, J *et* SWANEPOEL, J

Delivered on: 20 January 2012

SPECIAL REVIEW JUDGMENT

HOFF, J: [1] The accused was convicted in the magistrate's court of the crime of housebreaking with intent to commit a crime unknown to the State and sentenced to a "fine of N\$2 000.00 or in default 12 months imprisonment of which N\$1 000.00 or 6 months is suspended for a period of 3 years on condition that the

accused is not convicted of a housebreaking offence committed during the period of suspension”.

[2] The magistrate requested that “housebreaking offence” be substituted with “housebreaking with the intent to commit a crime unknown to the State”.

[3] It appears from the answers given in response to questioning in terms of section 112 (1)(b) of Act 51 of 1977 that the accused broke into a bar with the intention to find something to eat like maize meal.

[4] I agree with the magistrate that the sentence stands to be amended but this also applies to the conviction.

[5] In terms of section 262 (2) of the Criminal Procedure Act, Act 51 of 1977 if the evidence on a charge of housebreaking with intent to commit an offence to the prosecutor unknown does not prove such an offence but the offence of housebreaking with intent to commit a specific offence, the accused may be found guilty of the offence so proved.

[6] The accused on the evidence entered the bar with the intention to steal something (food), and therefore should have been convicted of the offence of housebreaking with the intent to steal.

[7] In the result the conviction and sentence are set aside and substituted as follows:

In respect of the conviction:

The accused is found guilty of the offence of housebreaking with the intent to steal.

In respect of the sentence:

N\$2 000.00 or 12 months imprisonment of which N\$1 000.00 or 6 months imprisonment are suspended for a period of 3 years on condition that the accused is not convicted of the crime of housebreaking with the intent to steal committed during the period of suspension.

HOFF, J

I agree

SWANEPOEL, J