

REPUBLIC OF NAMIBIA
HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
JUDGMENT

Case No: CR 29/2013

In the matter between:

THE STATE

and

ULRICH EISEB

(HIGH COURT MAIN DIVISION REVIEW REF NO 212/2013)

THE STATE

and

VERNON G KOOPER

(HIGH COURT MAIN DIVISION REVIEW REF NO 213/2013)

Neutral citation: *S v Eiseb, S v Kooper* (CR 29-2013) [2013] NAHCMD 105 [17 April 2013]

Coram: SHIVUTE, J and UNENGU, AJ

Delivered: 17 April 2013

Flynote: Criminal Procedure – Magistrate following the procedure in section 112(1) (b) of the CPA after a plea of not guilty – Irregular - conviction and sentence set aside.

Summary: The magistrate recorded formal admissions in terms of section 220 of the CPA in a plea of not guilty proceedings and convicting the accused persons

without affording the Public Prosecutor and the accused persons to either lead evidence or to close their respective cases – conviction and sentence irregular and set aside.

ORDER

‘The conviction and sentences in both cases, The State vs Vernon G Kooper and The State vs Ulrich Eiseb, are hereby set aside.

REVIEW JUDGMENT

UNENGU, AJ (SHIVUTE, J concurring):

[1] These two matters were submitted for automatic review as provided for in terms of section 302 of the Criminal Procedure Act¹, (The CPA).

[2] As the proceedings in both these cases appeared to me not to be in accordance with justice, I directed the following remark for the attention of the presiding magistrate in respect of both cases

**‘1. REVIEW CASE NO.: KMH-CRM-2016/2011
HIGH COURT REF. NO.: 212/2013
MAGISTRATE’S SERIAL NO.: 98/2011
THE STATE vs ULRICH EISEB**

**2. REVIEW CASE NO.: KMH-CRM-1611/2011
HIGH COURT REF. NO.: 213/2013
MAGISTRATE’S SERIAL NO.: 99/2011**

THE STATE vs VERNON G KOOPER

¹ Act 51 of 1977

- “1. It seems as if the accused had pleaded not guilty to the charge put to him by the State.
2. Did he thereafter change his plea from not guilty to one of guilty or not, and if not on what legal basis was the learned magistrate satisfied and convicted the accused as charged without giving the state and the accused the opportunity to either lead oral evidence or to close their cases respectively?’

[3] In her response, the magistrate concentrated on irrelevant issues which did not address the concern contained in the query sent to her. In view of the fact that the response from the magistrate is too long to quote it in whole, hereunder is a passage taken there from: I quote verbatim: ‘On the date of the trial the accused through the Prosecutor related to court that he wish to make admission in order to admit the elements of the offence he has denied during section 112(1) b questioning. These admission were taken down in writing and the court was satisfied that the accused admitted all the essential allegations of the offence and admitted the admission as formal in terms of section 220 of Act 51 of 1977 and convicted the accused on the offence charged.

No oral evidence was led by the State as the accused admitted the essential allegations and the accused were convicted based on the admissions he made’. (emphasis added)

[4] The above statement was made in respect of both the cases under review. It is apparent from the statement above that the learned magistrate confused the provisions of sections 112(1)(b) and 220 of the CPA.

[5] Section 112(1)(b) of the CPA comes into play after a plea of guilty by an accused person whereas section 220 is applied when an accused person has pleaded not guilty to the charge put to him or her.

[6] Section 220 of the CPA, therefore, provides for formal admissions made by an accused person at a plea of not guilty to be recorded with the consent of the accused. Therefore, even if the accused had admitted all the allegations of the

offence he or she was charged with – the magistrate cannot there and then convict such an accused without affording the Public Prosecutor and the accused the opportunity to, either lead evidence or close their respective cases, depending on the formal admissions recorded by the court.

[7] In my view, the procedure followed by the magistrate in both these review matters to convict the accused persons as if they have been questioning in terms of section 112(1)(b), is wrong. Here, the magistrate decided to close the cases for the State and the accused persons without themselves doing so. Consequently, the convictions and sentences in both the review matters are irregular and as such cannot be allowed to stand.

[8] In the result, I make the following order:

‘The conviction and sentences in both cases The State vs Vernon G Kooper and The State vs Ulrich Eiseb are hereby set aside.

E P Unengu
Acting Judge

N N Shivute
Judge